

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 77-4121

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

MILGO INDUSTRIAL, INC.,

Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

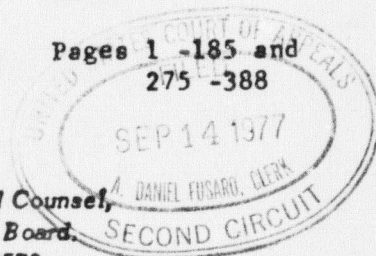
APPENDIX

VOLUME I

Pages 1 -185 and
275 -388

ELLIOTT MOORE,

Deputy Associate General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.



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BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-ninth Region

- - - - -x

In the Matter of: :

MILGO INDUSTRIAL, INC. :

CASE NO.

and :

29-CA-4612

SHOPMEN'S LOCAL UNION NO. 455, :
INTERNATIONAL ASSOCIATION OF :
BRIDGE, STRUCTURAL AND :
ORNAMENTAL IRON WORKERS, :
AFL-CIO :

- - - - -x

16 Court Street
Brooklyn, New York
March 29, 1976

The above entitled matter came on for hearing at
11:05 o'clock a.m.

BEFORE:

PAUL E. WEIL, Administrative Law Judge

APPEARANCES:

JACK D. EISENBERG, ESQ. 16 Court Street
Brooklyn, New York
Appearing on behalf of the
General Counsel

ARTHUR R. KAUFMAN, ESQ., Jackson, Lewis, Schnitzler
DAVID M. TOLMACH, ESQ. and Krupman, Esqs.
261 Madison Avenue
New York, New York
Appearing on behalf of the
Respondent

VICKI L. ERENSTEIN, ESQ. Sipser, Weinstock, Harper,
Dorn and Leibowitz, Esqs.
380 Madison Avenue
New York, New York
Appearing on behalf of
Charging Party

CSA Reporting

C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>VOIR DIRE</u>
William Colavito	23	48
		102

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3	12	15
4A,B,C	12	15
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Respondent's No.

1 7 7

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P R O C E E D I N G S

JUDGE WEIL: Let's go on the record.

The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Milgo Industrial, Inc. and Shopmen Local Union Number 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, Case Number 29-CA-4612.

The Administrative Law Judge designated to hear this matter is Paul E. Weil, W-E-I-L.

Commencing with Counsel for the General Counsel, will the representatives of the parties please state their appearances?

MR. EISENBERG: For the General Counsel, Jack D. Eisenberg.

JUDGE WEIL: The Charging Party?

MISS ERENSTEIN: For the Charging Party, Vicki Erenstein of Sipser, Weinstock, Harper, Dorn and Leibowitz, 380 Madison Avenue, New York.

JUDGE WEIL: For Respondents?

MR. KAUFMAN: Jackson, Lewis, Schnitzler and Krupman, 261 Madison Avenue, New York, New York, by David M. Tolmach and Arthur R. Kaufman.

JUDGE WEIL: Are there any other appearances?

I hear none.

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1 All parties, I believe, were served, along
2 with the complaint, with a copy of the Board's statement
3 of standard procedures for use in hearings of this nature
4 and in turn this hearing will be conducted in accordance
5 with it.

6 There will be no smoking in the hearing room
7 while we are on the record.

8 Will you introduce the formal documents, Mr.
9 Eisenberg?

10 MR. EISENBERG: Yes, Your Honor.

11 I offer General Counsel's Exhibit Number 1,
12 consisting of an index and description of formal papers.
13 The documents are labeled 1A through S, S being the index
14 and description of formal papers.

15 I have shown the formal papers to Counsel for
16 Respondent and offer them into evidence at this time.

17 JUDGE WEIL: Any objection to their receipt?

18 MR. KAUFMAN: Just let me make two comments
19 on them, that is, as to item 1L in the papers, which is
20 a request for a postponement of this hearing from March
21 5th to March 31st, I would like the record to indicate
22 that we were never served with a copy of that request to
23 postpone that was made by the Charging Party, and to this
24 date I have not received a copy of that.

25 I would certainly, if this is to be the formal

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1 papers, like to have a copy of that document so that my
2 formal papers are complete, but I was never sent one of
3 those and the Board is aware of that.

4 Secondly, I don't know if this is the appro-
5 priate time in which to make my application, but I am
6 going to be moving to amend our complaint in this matter.

7 MR. EISENBERG: Your answer.

8 MR. KAUFMAN: The answer, I mean. I am sorry.

9 JUDGE WEIL: Well, with regard to the document
10 that you have not been served with, does the General Coun-
11 sel have a copy?

12 MR. EISENBERG: A copy of the document is in
13 the formal papers.

14 JUDGE WEIL: I don't doubt that, but do you
15 have a copy to give him?

16 MR. EISENBERG: Not now.

17 JUDGE WEIL: During the course of the hearing
18 will you provide him with it?

19 MR. EISENBERG: I will.

20 JUDGE WEIL: Thank you.

21 MR. KAUFMAN: Can I have it as soon as we have
22 our first break?

23 It may be important to me to review that.

24 MR. EISENBERG: I will give it to you as soon
25 as possible.

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1 MR. KAUFMAN: Your Honor, I hate to go through
2 this all the time with General Counsel, but I've asked a
3 very simple question.

4 The photostat machine is on the next floor,
5 it is not asking an undue burden on General Counsel to
6 supply me a copy, with the paper when we -- we have a break.

7 I'm not asking that we break now.

8 MR. EISENBERG: I don't see any issue, Mr.
9 Kaufman.

10 JUDGE WEIL: I will receive the documents.

11 (The above referred to docu-
12 ments, marked General Coun-
13 sel's Exhibit 1A through 1S,
were received in evidence.)

14 JUDGE WEIL: Are there any motions addressed
15 to the pleadings?

16 MR. KAUFMAN: That's correct, Your Honor.

17 JUDGE WEIL: Other than your -- do you have
18 any motion addressed to the pleading?

19 MR. EISENBERG: I don't.

20 JUDGE WEIL: If he is going to amend the com-
21 plaint, you might as well face that too.

22 MR. EISENBERG: All right.

23 MR. KAUFMAN: At this time, Your Honor, I
24 would like to move to amend the answer in the complaint --
25 this is my original.

JUDGE WEIL: Mark that Respondent's 1, will

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1 you please?

2 (The above referred to docu-
3 ment was marked Respondent's
4 Exhibit No. 1 for identifi-
5 cation.)

6 MR. EISENBERG: May we have a few minutes to
7 look over this?

8 JUDGE WEIL: We will go off the record for a
9 few minutes while you go over it.

10 MR. EISENBERG: Thank you.

11 JUDGE WEIL: Off the record.

12 (Discussion off the record.)

13 JUDGE WEIL: On the record.

14 Is there any objection to the amendment --
15 amended complaint?

16 MR. EISENBERG: I have no objection as such,
17 Your Honor.

18 I will submit that I am a little bit surprised,
19 but that's okay.

20 I think it's not really necessary at this
21 point to reply with respect to either of these new affirma-
22 tive defenses which have been pleaded.

23 JUDGE WEIL: Very well.

24 I will receive Respondent's 1 and I'll grant
25 the motion to amend the answer.

 (The above referred to docu-
 ment, heretofore marked Re-

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8
spondent's Exhibit No. 1,
was received in evidence.)

1
2 MR. KAUFMAN: Your Honor, also in the interest
3 of expediting this proceeding, I notice that, according
4 to the amended answer, paragraph 1 is still denied,
5 knowledge and information as set forth in paragraph 3 of
6 the answer.

7 We have denied knowledge and information as
8 to form a belief as to paragraph 1 of the complaint.

9 At this time we would be prepared to admit
10 paragraph 1 of the complaint.

11 JUDGE WEIL: Very well. Thank you.

12 I will duly admit it.

13 MR. EISENBERG: May we go off the record for
14 a moment, Your Honor?

15 JUDGE WEIL: Off the record.

16 (Discussion off the record.)

17 JUDGE WEIL: On the record.

18 MR. KAUFMAN: Your Honor, on January 8th, 1976
19 we wrote to this Region, addressed to the Regional Director,
20 requesting that any documents, any affidavits or statements
21 in possession of General Counsel that might have a bearing
22 on this case or that were taken in conjunction with this
23 case be turned over to us in preparation for trial under
24 the Freedom of Information Act.

25 This request was rejected by the Regional

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1 Director by letter to us and at this time, Your Honor, in
2 order to avoid prejudice to our case, we are asking that
3 those documents now be turned over to us to give us a
4 proper time in which to prepare our defense under the
5 Freedom of Information Act.

6 JUDGE WEIL: Do you wish to respond?

7 MR. EISENBERG: General Counsel takes the
8 position, according to the Board's rules and regulations,
9 General Counsel is not obligated to turn over any affi-
10 davits, which I believe was the request.

11 MR. KAUFMAN: That's correct.

12 MR. EISENBERG: Yes.

13 MR. KAUFMAN: Affidavits or statements.

14 MR. EISENBERG: Affidavits or statements to
15 Respondent until such time as proper request is made at
16 the appropriate time after the direct examination of
17 General Counsel's witness.

18 JUDGE WEIL: Very well.

19 Your answer, Counselor.

20 MR. KAUFMAN: Well, our answer is that the
21 United States District Court for the Southern District of
22 New York in a case of Title Guaranty Company versus the
23 National Labor Relations Board, Second Region, has ordered
24 the General Counsel to turn such documents over to counsel
25 for Title Guaranty prior to the commencement of the trial,

1 in order to afford counsel for Title Guaranty a reasonable
2 time to study the documents and prepare a proper defense.

3 JUDGE WEIL: What do you expect me to do?

4 MR. KAUFMAN: I am making a motion at this
5 time that Your Honor direct General Counsel to turn over
6 those documents for us -- to us so that we can have a
7 chance to study them prior to the actual commencement of
8 this trial.

9 JUDGE WEIL: Your motion is denied.

10 MR. KAUFMAN: I take it that we have a stand-
11 ing exception to adverse rulings?

12 JUDGE WEIL: As usual, yes.

13 MR. KAUFMAN: I also at this time would like
14 to move to have the complaint stricken insofar as it
15 alleges any dates prior to the 10B period, which would be
16 April 1st, 1975.

17 The complaint as it now stands, paragraphs
18 12, 13, 14, A and B, 15, 16, 17 and on all alleged allega-
19 tions that occurred outside of the 10B period, and the way
20 this complaint reads General Counsel is trying to establish
21 his case or trying to prove facts that occurred outside
22 the 10B period.

23 This would be in direct violation of Section
24 10B and we're asking that the complaint be brought into
25 conformity with the Board's law and all allegations that

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11
1 occurred outside of the 10B period be either stricken or
2 that there be no finding made of any violation after the
3 10B period.

4 JUDGE WEIL: I will deny your motion.

5 I can assure you that no finding will be made
6 of a violation committed before the 10B period -- outside
7 the 10B period.

8 MR. KAUFMAN: Thank you.

9 MR. EISENBERG: Can we take a few minutes?

10 JUDGE WEIL: Do you want to take a few minutes
11 now?

12 MR. EISENBERG: Yes.

13 JUDGE WEIL: All right. Let's go off the
14 record.

15 (Discussion off the record.)

16 JUDGE WEIL: On the record.

17 MR. EISENBERG: I offer for identification and
18 also in evidence at this time as General Counsel's Exhibit
19 2 a letter dated July 1st, 1974 from William Colavito,
20 President of the union to Milgo.

21 (The above referred to docu-
22 ment was marked General Coun-
sel's Exhibit No. 2 for iden-
tification.)

23 MR. EISENBERG: A letter dated July 24, 1974
24 from Respondent to the Union as General Counsel's Exhibit
25 3.

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1 MR. KAUFMAN: When you say signed, it's their¹²
2 attorney, David Tolmach.

3 MR. EISENBERG: Well --

4 MR. KAUFMAN: Not really by Respondent.

5 MR. EISENBERG: The document speaks for it-
6 self.

7 That's fine with me.

(The above referred to docu-
8 ment was marked General Coun-
9 sel's Exhibit No. 3 for iden-
tification.)

10 MR. EISENBERG: As General Counsel's Exhibit
11 4A, B and C, A being a letter dated July 25, 1974 from
12 Respondent to the Union, signed by Bruce Gitlin, as B a
13 listing of the name, address, starting date and rate of
14 pay of each employee, and C being a copy attached thereto
15 of fringe benefits.

(The above referred to docu-
16 ments were marked General
17 Counsel's Exhibit No. 4A, B,
18 and C for identification.)

19 MR. EISENBERG: General Counsel's Exhibit 5
20 a copy of a standard form contract submitted -- of a --
21 withdrawn.

22 A copy of a contract submitted by the Union
23 to Respondent.

(The above referred to docu-
24 ment was marked General Coun-
25 sel's Exhibit No. 5 for iden-
tification.)

1 MR. EISENBERG: General Counsel's Exhibit 6 a
2 letter from Respondent signed by Bruce Gitlin to the Union.

3 (The above referred to docu-
4 ment was marked General Coun-
5 sel's Exhibit No. 6 for iden-
6 tification.)

7 JUDGE WEIL: What's the date on that?

8 MR. EISENBERG: August the 23rd, 1974.

9 JUDGE WEIL: Thank you.

10 MR. EISENBERG: A letter dated February 3rd,
11 1975 signed by David M. Tolmach to the Union.

12 (The above referred to docu-
13 ment was marked General Coun-
14 sel's Exhibit No. 7 for iden-
15 tification.)

16 MR. EISENBERG: General Counsel's Exhibit 8,
17 a letter dated August the 12th, 1975 from the Union,
18 addressed to David Tolmach.

19 (The above referred to docu-
20 ment was marked General Coun-
21 sel's Exhibit No. 8 for iden-
22 tification.)

23 MR. EISENBERG: As General Counsel's Exhibit 9
24 a letter dated August 18th, 1975, signed by David Tolmach
25 to the Union.

(The above referred to docu-
ment was marked General Coun-
sel's Exhibit No. 9 for iden-
tification.)

MR. EISENBERG: A letter dated September 25th,
1975 from Respondent to the Union.

(The above referred to document was marked General Counsel's Exhibit No. 10 for identification.)

MR. EISENBERG: I offer General Counsel's Exhibits 2 through 10 into evidence at this time.

JUDGE WEIL: Any objection?

MR. KAUFMAN: Let me just state, Your Honor, that the only objection I would have would be to point out for the record that, according to our records, Exhibit 5 for identification, the copy of the standard form agreement, does contain the words Milgo on the copy that was presented to us.

It does not actually alter the contract which was presented in any way, although the Union did write the word Milgo on our copy.

Other than that, I do not have any objection to these documents.

JUDGE WEIL: Very well.

I will receive General Counsel's Exhibits 2 through 10 and I take it that the parties are prepared to stipulate that the various documents were sent and received on or about the dates that they bear?

MR. KAUFMAN: I do not know if I can stipulate to that, particularly as to paragraph -- as to item number 2, which is dated July 1, a letter from Mr. Colavito which

1 was sent certified mail, and I did ask to see a copy of
2 the certification, which is not here, so I do not know
3 when we received it and I think I cannot stipulate that
4 it was received on or about that date.

5 JUDGE WEIL: Very well.

6 As to the others, I will deem their authentication
7 stipulated.

8 (The above referred to documents, heretofore marked
9 General Counsel's Exhibits
10 Nos. 2 through 10, were received in evidence.)

11 MR. EISENBERG: Your Honor, may I have permission
12 at this time to make a brief opening statement?

13 JUDGE WEIL: Yes.

14 MR. EISENBERG: Your Honor, General Counsel
15 will show that Respondent failed to bargain in good faith
16 in the negotiations in this case which began -- the actual
17 negotiations, the meetings which began in August, 1974
18 and continued until September, 1975.

19 There were approximately twenty meetings over
20 this length of time.

21 The basic allegation of the complaint is that
22 Respondent engaged in bargaining but without any intent to
23 reach agreement.

24 General Counsel contends that Respondent engaged
25 in surface bargaining and we allege that the entire

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1 course and conduct of the bargaining as practiced by Re-
2 spondent was in bad faith, as we intend to show the entire
3 bargaining with Respondent was surface bargaining.

4 For the purpose of this opening statement, I
5 will merely indicate some of the conduct which General
6 Counsel alleges constituted indicia of bad faith bargaining
7 but, of course, we are alleging that the entire bargaining--
8 everything was in bad faith.

9 Respondent alleges it submitted certain in-
10 formation to the union which the union previously request-
11 ed and did not supply certain information to the union,
12 all of which information is directly related to bargaining
13 over economic provisions of a contract.

14 General Counsel alleges that the delay in
15 supplying such information and the failure to supply such
16 other information are not only indicia of bad faith but
17 also constitute separate violations of 8A5 as alleged in
18 the complaint.

19 Your Honor, the testimony will reveal that
20 Respondent did not regard the bargaining here as a serious
21 business matter.

22 During the entire duration of the bargaining
23 it continually engaged in delaying and stalling tactics.

24 Virtually all of the negotiating sessions took
25 place at Respondent's insistence at its attorney's office,

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1 began in the afternoon and only continued to around rush
2 hour, Respondent's representatives frequently pleaded
3 fatigue or a desire to beat the rush hour traffic and
4 continually rebuffed the union's request for longer and
5 more intensive sessions than the one and a half to two
6 hour sessions that were, in fact, occurring -- one and a
7 half to three hour sessions.

8 There were frequently great gaps of time that
9 elapsed between sessions.

10 The union's initial request to bargain was
11 made pursuant to the judgement of the Court of Appeals
12 enforcing the Board's decision in the prior case, as re-
13 ferred to in the complaint, and contained a suggested
14 date for the first session.

15 However, Respondent only agreed to meet one
16 month later than the date requested by the Union and
17 thereafter on quite a few occasions Respondent failed to
18 agree to prompt resumptions of sessions.

19 For example -- only a partial example, from
20 November 22, 1974 to March 3rd, 1975 no sessions were held,
21 mainly because Respondents were not available.

22 On other occasions large periods of time elapsed
23 between meetings, especially in the latter months of the
24 bargaining when the Union insisted on more frequent meet-
25 ings and tried to arrange such, it was told on various

1 times by Respondent in general that their representatives
2 were busy or had heavy schedules or had other obligations
3 and thus could not meet earlier.

4 Respondent also called off a number of
5 scheduled meetings and, in fact, on one occasion when the
6 union appeared at a scheduled meeting, Respondent's repre-
7 sentative was not present, having attended another meeting
8 and failed to notify the union.

9 The testimony will further develop General
10 Counsel's contentions in this regard.

11 General Counsel will further show other in-
12 dicia of bad faith surface bargaining.

13 Respondent shifted positions on certain items,
14 reneged on others, and took such positions and generally
15 conducted bargaining in its entirety in such a way as to
16 evidence its bad faith intent.

17 By example, it shifted its initial position
18 on union security and insisted continually throughout the
19 negotiations on the unilateral change in shift hours and
20 starting and quitting times and wanted to limit the coverage
21 of the contract only to its present place of business.

22 There are more items in this regard which we
23 will -- General Counsel will develop during the course of
24 the hearing.

25 By all of its conduct and tactics of surface

1 bargaining Respondent precluded intensive bargaining.

2 These considered with its prior commission of
3 unfair labor practices clearly indicate Respondent's bad
4 faith bargaining without any intention to enter into any
5 agreement at all with the union.

6 JUDGE WEIL: Thank you, Counselor.

7 Does the Respondent wish to answer at this
8 time?

9 MR. KAUFMAN: I would like to reserve any
10 statement until I hear General Counsel's case and prior
11 to presenting my case I may wish to answer at that time,
12 Your Honor.

13 JUDGE WEIL: Very well.

14 MR. EISENBERG: Your Honor, before I call my
15 first witness I request that you take official notice of
16 two matters referred to in the complaint, one is the de-
17 cision and order of the Board involving the Charging Party
18 and the Union in a prior case at 203 National Labor Re-
19 lations Board Number 152 and the judgement of the Court of
20 Appeals regarding that decision and order enforcing it,
21 and the Court of Appeals for the Second Circuit dated
22 June 11th, 1974 in Case Number 732242.

23 JUDGE WEIL: I will take notice of it.

24 MR. EISENBERG: Would you like copies?

25 JUDGE WEIL: I would like copies, if you have

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1 them.

2 MR. KAUFMAN: I would like to point out to
3 Your Honor that in both of those cases we have received
4 no notice from this Region advising us satisfactory evi-
5 dence of compliance had been taken, in that the cases were
6 being closed.

7 JUDGE WEIL: Thank you, Counsel.

8 MR. EISENBERG: Do you only want one copy,
9 Your Honor?

10 JUDGE WEIL: Pardon?

11 MR. EISENBERG: You only want one copy?

12 JUDGE WEIL: Yes. I find I have lots of them
13 here.

14 MR. EISENBERG: Okay.

15 Your Honor, if I might make a suggestion, I
16 have -- my first witness that I intend to call I expect to
17 be very, very intensive and long questioning and I feel
18 that if we start now and break for lunch in an hour or a
19 half hour, I am going to be interrupted in important areas,
20 as we are alleging overall surface bargaining, and even
21 though I do note that it is early, perhaps now might be
22 the appropriate time for a lunch break and we should resume
23 at ten minutes of one when we can have a full length of
24 time to --

25 JUDGE WEIL: We can beat the run on the local

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1 restaurant, I suppose.

2 Do you have any objection to breaking?

3 MR. KAUFMAN: No, we have no objection.

4 JUDGE WEIL: Very well.

5 We will break now until ten minutes to one.

6 (Whereupon, a luncheon recess was taken at 11:50

7 o'clock a.m.)

AFTERNOON SESSION

(The hearing reconvened at 12:50 o'clock p.m.)

JUDGE WEIL: On the record.

The hearing will come to order.

MR. EISENBERG: General Counsel calls William Colavito.

JUDGE WEIL: Step over here, sir.

Raise your right hand.

Whereupon,

WILLIAM COLAVITO

was called as a witness by and on behalf of the General Counsel and having been first duly sworn, was examined and testified as follows:

MR. KAUFMAN: Your Honor, before the testimony of Mr. Colavito commences, I wish to point out that we have a tape recorder in the room and that for the purpose of cross examination -- preparation for cross examination we will be using that tape recorder to record Mr. Colavito's testimony.

JUDGE WEIL: It's all right with me, just so long as it doesn't interfere with the hearing.

MR. KAUFMAN: Thank you, Your Honor.

JUDGE WEIL: State your name and address.

MR. COLAVITO: William Colavito, 853 Broadway, New York City.

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1 JUDGE WEIL: Spell your surname, please.

2 MR. COLAVITO: C-O-L-A-V-I-T-O.

3 JUDGE WEIL: Thank you.

4 MR. EISENBERG: Your Honor, may I have a
5 moment to consult concerning the use of a tape recorder?

6 I am not really sure that it's appropriate at
7 a formal hearing. A record is being kept in -- that should
8 suffice.

9 JUDGE WEIL: It will for our purpose.

10 As long as the tape recorder doesn't inter-
11 fere with the hearing, I don't care if it's running or not.

12 MR. EISENBERG: Well, again may I have a moment
13 just to consult and see if there is any objection that I
14 may make? I really --

15 JUDGE WEIL: Whom do you wish to consult?

16 MR. EISENBERG: Max -- my Assistant Regional
17 Attorney.

18 JUDGE WEIL: All right.

19 Off the record.

20 (Discussion off the record.)

21 JUDGE WEIL: On the record.

22 DIRECT EXAMINATION

23 Q (By Mr. Eisenberg) Mr. Colavito, would you state
24 your full position with the union, please?

25 A I am the President of the local union.

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1 MR. KAUFMAN: Your Honor, I notice that
2 Mr. Colavito has some papers on the witness stand.

3 Might I inquire from counsel what the purpose
4 of those papers are?

5 MR. EISENBERG: No purpose as of yet.

6 MR. KAUFMAN: Can those papers be removed
7 from the witness stand then, if they serve no purpose.

8 MR. EISENBERG: As of yet.

9 MR. KAUFMAN: As of yet.

10 JUDGE WEIL: They're all right. They're fold-
11 ed up.

12 MR. EISENBERG: They're closed.

13 MR. KAUFMAN: There's nothing written on them?

14 JUDGE WEIL: This side is blank.

15 Q (By Mr. Eisenberg) Mr. Colavito, did there come a
16 time when you requested Respondent, Milgo, to meet with
17 you?

18 A Yes. After we heard the decision, the enforcement
19 decision, we contacted the company for some information
20 and for setting up a meeting with the local union involved.

21 Q How did you contact the company?

22 A By letter.

23 Q Is that the first contact you had with the company?

24 A After the -- the decision of the Court, yes.

25 Q You said that the letter requested certain information.

1 What were you requesting at that time?

2 A The names and addresses of the employees, their
3 classifications, wage rates, starting dates --

4 MR. KAUFMAN: Your Honor, I believe we marked
5 into evidence certain documents.

6 I believe this letter was marked into evidence.

7 If that letter was marked into evidence, which
8 is my belief, then I believe under the best evidence
9 rule the letter is in evidence, it speaks for itself
10 and, accordingly, I would object to this witness'
11 statement if that letter is in the room.

12 JUDGE WEIL: Is that the letter --

13 MR. EISENBERG: That is the letter.

14 JUDGE WEIL: The letter he's describing?

15 MR. EISENBERG: That's correct.

16 JUDGE WEIL: I will sustain the objection.

17 Q (By Mr. Eisenberg) Did you receive any response
18 from that letter?

19 A We heard from the company that we would be hearing
20 from their attorney.

21 Q Do you remember when that was?

22 A No. It was toward the latter part of July, I believe.

23 Q How did the company contact you?

24 A They mailed us this letter and then eventually the
25 company attorney contacted us.

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1 Q Was there any discussion or other contact concerning
2 setting up a meeting?

3 A A telephone call by the attorney for the company to
4 arrange a meeting and a meeting was eventually arranged
5 for the 8th of October -- August, rather.

6 Q Who initiated the telephone call, the first one?

7 A At this point, I don't remember.

8 We had not heard from the company for a few weeks
9 and we got the letter, we still had not heard from the
10 company and then I believe our office called the law firm
11 to try to arrange a meeting and we got a call back and
12 that date was arranged, the 8th of August.

13 Q When was the first meeting arranged for?

14 A August 8th of '74.

15 Q You requested certain information in your initial
16 letter.

17 Did you ever get any of the information prior to the
18 first meeting?

19 A I believe we received the names, addresses and classi-
20 fication -- and wage rates, starting dates from the com-
21 pany.

22 Q How did -- how did the company send you this informa-
23 tion?

24 A Through the mail.

25 Q I show you General Counsel's Exhibit 4A through C.

1 Is that what they responded to? (Handing documents
2 to witness.)

3 A Yes.

4 Q Mr. Colavito, did you attend negotiations between
5 the parties?

6 A Yes, I attended all the sessions.

7 Q All the sessions?

8 A Except one where the Vice President of the union
9 went to, that meeting was called off, but I -- I partici-
10 pated in all negotiations.

11 Q All the negotiations that took place?

12 A Yes.

13 Q How would you characterize your role in the negotia-
14 tions?

15 A I was the spokesman for the union.

16 Q Were you the main spokesman?

17 A Yes.

18 Q Now, Mr. Colavito, these bargaining sessions started,
19 as you said, in August 8th, 1974.

20 Do you remember the events of each meeting?

21 It was a year --

22 A Yes.

23 Q (Continuing) -- at least, the bargaining, and it's
24 about a year and a half --

25 A There were quite a few and I'm not saying I can re-

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1 member all the details of the negotiations.

2 I'm not even sure I can remember even the meeting
3 dates, but I have a pretty good general idea what took
4 place at the --

5 Q Is there anything that would help your memory?

6 MR. KAUFMAN: Objection.

7 There's been no foundation laid as to the
8 specific meeting dates yet, as to what took place
9 at the meeting.

10 JUDGE WEIL: Your objection is premature,
11 Counsel.

12 Overruled.

13 A Yes, the documents that I used and the notes that
14 I used would certainly be of some help to recollect.

15 Q You mentioned notes, how did these notes come about?

16 A They were made in relation to the negotiating meet-
17 ings.

18 Q When were they made?

19 A Most of the time during or after the meetings.

20 Q How long -- when was it done after?

21 A It would be the same night or the next day.

22 Q Mr. Colavito, I will suggest that if you need to
23 refer to your notes to refresh your memory, you should do
24 so.

25 MR. KAUFMAN: Objection.

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1 I object to Counsel's statement to that effect.

2 If and when that comes up, there is a proper
3 method to be established for a witness to refresh
4 his recollection.

5 JUDGE WEIL: That's right.

6 MR. EISENBERG: Excuse me?

7 JUDGE WEIL: I said, that's right.

8 MR. EISENBERG: You are not going to allow
9 Mr. Colavito to use his notes for any or all of the
10 sessions that would refresh his recollection?

11 JUDGE WEIL: I didn't say that at all. I
12 didn't say that at all. Counsel --

13 MR. EISENBERG: I misunderstood then.

14 JUDGE WEIL: Counsel objected to your state-
15 ment, stating quite correctly there is a proper method
16 to use notes to refresh a witness' recollection, and
17 I said, that's right, there is.

18 MR. EISENBERG: I'm sorry, Your Honor, with
19 respect to the tape recorder, I did not mention
20 prior thereto the position of -- I'm not going to
21 object to it, but I would request that -- that it
22 be kept out of the sight of the witness, and also
23 that we -- I don't anticipate there would be an
24 interruption of the hearing to change reels on the
25 tape.

1 JUDGE WEIL: I see no need to keep it out of
2 the witness' sight.

3 He's well aware that it's here, as we all are.

4 As far as interrupting the hearing is concern-
5 ed, I've already told counsel that he may use it as
6 long as it doesn't interfere with the hearing.

7 Q (By Mr. Eisenberg) Mr. Colavito, was the first
8 bargaining session held as scheduled?

9 A Yes, it was.

10 Q Where was it held?

11 MR. KAUFMAN: Your Honor, I am going to object
12 to this whole line of questioning.

13 The 10B period commenced on April 1st, 1975,
14 as the charge was filed on October 1st, 1975.

15 The witness has testified that the first
16 session was scheduled for August 8th and now he's
17 going to be testifying about that first session.

18 Because of the fact that August 1st, 1974 is
19 more than six months from the filing of the charge
20 on October 1st and since Your Honor has stated that
21 no finding of violation can be based on that conduct,
22 I am going to object to questioning that has no
23 foundation in this hearing.

24 JUDGE WEIL: Overruled, and don't misquote me
25 like that.

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1 MR. KAUFMAN: I am sorry if I misquoted you,
2 Your Honor.

3 JUDGE WEIL: I did not state that no finding
4 of violation can be based on that conduct.

5 I stated that I would find no violation that
6 took place outside the 10B period.

7 MR. KAUFMAN: That's correct, Your Honor. I
8 stand corrected.

9 May I ask for what purpose General Counsel
10 is introducing evidence --

11 JUDGE WEIL: Obviously for background, Coun-
12 selor. In the course of bargaining we have to have
13 background.

14 We can't just cut out one tree and just say
15 this is a forest of pine trees.

16 MR. KAUFMAN: So it's just being used for
17 background, I assume, is that correct?

18 JUDGE WEIL: Your assumption is yours.

19 That's what I propose to use it for.

20 Q (By Mr. Eisenberg) Do you recall who was present
21 at the meeting?

22 A David Tolmach, the attorney -- it was in the attorney's
23 office -- Bruce Gitlin for the company, employer and myself.

24 Q When did the meeting start?

25 A In the afternoon.

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1 Q Approximately what time?

2 A I don't recollect.

3 You know, it might have been around 2:00 o'clock,
4 1:00 or 2:00 o'clock.

5 Q Approximately how long was it?

6 A An hour and a half to two hours, I guess.

7 Q Do you recall precisely what occurred at that meet-
8 ing?

9 A Precisely -- you know, I know some of the questions
10 that were discussed and raised and the procedures that
11 were used and -- you know, I could try to recollect what
12 took place.

13 Q Would anything aid you in your recollection?

14 A My -- my notes would add more to what I recollect
15 and the documents that I used, you know, I -- in the case.

16 MR. EISENBERG: At this time, Your Honor, I
17 request permission --

18 JUDGE WEIL: Counselor, let's find out what he
19 does recall.

20 MR. EISENBERG: Okay.

21 JUDGE WEIL: You can't show what he's going to
22 use it for until you have shown where his recollec-
23 tion fails.

24 This is important too.

25 MR. EISENBERG: All right.

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1 MR. KAUFMAN: Your Honor --

2 JUDGE WEIL: If it fails.

3 MR. KAUFMAN: Your Honor, I wonder if I might
4 have a standing objection as to all testimony proffered
5 by this witness with respect to any dates that
6 preceded April 1st, 1975?

7 JUDGE WEIL: Yes, you may have a standing objection,
8 and it's overruled.

9 Q (By Mr. Eisenberg) Can you tell us what happened
10 at this meeting as to what was said and what was discussed,
11 all the things that happened?

12 A Not necessarily in the same sequence that I am relating
13 them, but I gave the attorney a copy of our proposed
14 agreement, the employer requested that I get a copy
15 to him and I said I would.

16 I raised some questions of information that was not
17 included in the information that we had been supplied with
18 but which we had requested and --

19 Q What -- excuse me.

20 A That was the question of classifications and job
21 operations.

22 Q What specific items of information do you request --
23 did you request?

24 A At this meeting?

25 Q At that meeting.

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1 A I had asked for the job operations and classifica-
2 tions and responsibilities of individual workers that were
3 in the bargaining units.

4 I had asked for any wage increase that had occurred
5 in the latest period of time.

6 Q Do you recall what period of time?

7 A Well, since the time that we -- we started organizing,
8 which was in '71.

9 Q Did you request anything else that you remember?

10 A I requested copies of the welfare and pension --
11 first I asked if they had any and they said, yes, and I
12 asked for copies of the welfare and pension, if they had
13 any.

14 Q What kind of copies?

15 A The company said they had a pension plan and a Blue
16 Cross, Blue Shield program.

17 I had asked for copies of both and if there was any
18 trust agreements, also a copy of that.

19 I asked for costs of the two programs.

20 Q Did you ask for any other items concerning those two
21 programs?

22 A That's all I recollect.

23 I think I had requested the --

24 MR. KAUFMAN: Excuse me.

25 I wonder -- I lost the last part of his pre-

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1 vious -- the prior answer.

2 Can I just have that read back?

3 JUDGE WEIL: He said, that's all I can recollect.

4 MR. KAUFMAN: No, the one before that where he
5 is talking about the pension and welfare part of it.

6 JUDGE WEIL: Read it back.

7 (Whereupon, the above referred to answer was
8 read by the reporter.)

9 MR. KAUFMAN: Thank you.

10 A Should I go on?

11 The company had told us, I think, ten and a half
12 holidays, I wanted to know which holidays they meant as to
13 part of the ten and a half holidays.

14 Q Can you speak up a little bit? I am having a little
15 trouble hearing.

16 A Yes.

17 I think those were the questions -- the information
18 I requested.

19 Across the table I asked them, since I had the list
20 of the employees, if two employees were still there, be-
21 cause they had voted in the previous election over our
22 objections, and -- and they said, well, their work had
23 changed and they gave us some information about them.

24 Q Let me go back to the information you requested.

25 You mentioned something about job classifications.

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1 Do you recall specifically what you requested for --
2 what you requested?

3 A The work operation of the various employees, their
4 responsibilities, so -- and their classifications, and the
5 company had responded with a letter, of course, that they
6 had no classification system.

7 Q Well --

8 A I said --

9 Q Was there any -- withdrawn.

10 Did you ask for any other information that you can
11 remember?

12 A I might have asked if they had any sick leave pro-
13 gram, if they had a system of sick leave.

14 Q Can you recall anything else at this time?

15 A No, I can't.

16 Q Do you recall anything concerning bonuses?

17 MR. KAUFMAN: Objection.

18 JUDGE WEIL: Overruled.

19 A Yes, I did ask -- I knew the company paid bonuses
20 and I had asked information on the bonuses that were paid
21 to the employees.

22 Q Did you get any response at this meeting from either
23 representative of the company that was there concerning
24 the information you had requested?

25 A Well, they said they would supply us with all the

1 information.

2 We did get into a discussion on the question of whether
3 the company had a classification system or not.

4 I said the company had to have a classification
5 system, whether it was formal or informal, people did cer-
6 tain job operations, had certain responsibilities, so
7 there was, in fact, a classification system and we would
8 have to have that in order to prevent inequities and
9 also to be able to make a proper kind of bargaining offer
10 on wages, and so forth.

11 Q What did the company say?

12 A They gave us some breakdown verbally of what one man
13 did compared to another man and -- but I said I would like
14 a more detailed -- something put on paper in relation to
15 every employee.

16 Q Who -- who did the speaking in that regard?

17 A On the job classifications, job operations, Bruce
18 Gitlin did most of the speaking.

19 Q Was there anything else discussed at that meeting?

20 A Well, there was some time spent with a law suit,
21 which the attorney asked the employer about, and that dealt
22 with some work that the company had been doing as part of
23 its operation -- its sculp work with metal, metal sculp
24 work, and they said they had a law suit out west somewhere
25 where a man was killed and that really put the company in

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1 some kind of financial problem and that, as a result of
2 that, they had pretty much phased themselves out of sculp
3 work.

4 They weren't doing much of that any more, they weren't
5 even interested in that any more.

6 Q How did that come about, that discussion?

7 A As I said, the -- they told me -- I asked Bruce, how
8 are you making out with that case, and that's how it start-
9 ed.

10 Q How long was that discussed?

11 A I guess about thirty-five, forty minutes.

12 Q What was your reaction to that?

13 Did you say anything?

14 A Well, I participated to some degree in terms of how
15 the company could be held liable, in terms -- I was con-
16 cerned, of course, with the kind of work and who was in-
17 volved in doing the sculp work now and what those people
18 were doing.

19 I know there's usually two or three employees in-
20 volved in that work and I wasn't sure if it was to my
21 benefit or not in terms of the financial status of the
22 company, it seemed -- and the impact on the financial
23 possibility of the company negotiating a contract.

24 Q Now, you stated you gave a copy of your contract
25 proposal to the company.

1 Did you say anything about that when you gave it to
2 them?

3 A I said it was a proposed agreement.

4 I think I had worked out a wage classification system
5 based on the information I had about the employees and
6 what they did.

7 Basically the other sections of the contract that
8 dealt with items -- language that was covering about a
9 hundred sixty other companies we had in the contract, but
10 that the wage section was modified to apply to this company
11 and the fact that we -- you know, we have been trying to
12 negotiate and represent the men since 1971.

13 Q When you handed -- who did you hand the contract to?

14 A I guess I gave it across the table.

15 I don't remember if I gave -- I might have given it
16 to the attorney.

17 Q Did either Mr. Bruce Gitlin or Mr. Tolmach do any-
18 thing or say anything with respect to the contract?

19 A Well, of course, Bruce asked for a copy.

20 I said I would get it to him as soon as I can, get
21 one to him.

22 Dave Tolmach said he would like a little time to
23 digest it before we would start discussing it.

24 He asked -- he saw it, he looked through it and he
25 said, I see you have a welfare and pension, he asked me the

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1 details of the benefit program and the cost.

2 I told him the costs were in the contract.

3 The details I gave him in terms of what the welfare
4 and pension program provided for their employees.

5 Q What did you say?

6 A About the benefits?

7 Q Yes.

8 A Well, I said in terms of the welfare -- it provided
9 for a major medical of fifty thousand, fifty dollar de-
10 ductible, eighty, twenty, it provided for Blue Cross, it
11 provided for a dental program for a man and his family,
12 an eye glass program for a man and every member of his
13 family, a drug program, prescription drug, life insurance
14 policy, ten thousand dollars.

15 Basically I think that was what was -- I said about
16 the welfare.

17 Pension -- I gave them what the pension benefit was
18 for so much -- so many years of service, and that their
19 employees would be given credit for service with the com-
20 pany, if we worked out a contract with a pension contri-
21 bution.

22 Q Did either Mr. Gitlin or Mr. Tolmach have any response
23 to what you had told them?

24 A No. They just wanted the information and they --
25 and wanted copies of the -- of the material that my remarks

1 were outlined in.

2 Q Now, you had testified that Mr. Tolmach said he want-
3 ed some time to digest your proposal?

4 A Yes.

5 Q Was anything said at this meeting about arranging
6 another meeting by you or anyone else?

7 A He wanted, I think, two weeks in which he was going
8 to -- two weeks --

9 Q Who is he?

10 A Dave, Dave Tolmach. He wanted to go over it.

11 He said he would call me in a couple of days to give
12 me a date. He wasn't -- he wasn't able to give me a date
13 at this moment.

14 Q Did you request one?

15 A Yes, I did.

16 I said I would like to have a date. It's been a
17 long, long road between the company and the union and the
18 men. The men have been apprehensive.

19 I suggested also that I would prefer a meeting in
20 the plant premises or the company office, rather than the
21 attorney's office. At least the men would know that we're
22 negotiating a meeting, but they said that there was no
23 facilities, there wasn't the space at the company place,
24 and I didn't get very far with that.

25 Q Well, what did you say?

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1 A I said, I prefer it, you know, the men are -- don't
2 understand all of the -- right from the beginning, all
3 these years, contract negotiations.

4 If they can just visually see the participants, it's
5 a little bit of a --

6 MR. KAUFMAN: Objection.

7 Is the witness testifying as to his theory or
8 state of mind or is he testifying as to what he told
9 Mr. Tolmach and Mr. Gitlin?

10 JUDGE WEIL: That's what he said he said as
11 to what he told them.

12 Go ahead.

13 A In terms of getting a date, I said I could understand
14 your wanting to digest it, it's a large contract, but I
15 would appreciate and the men would appreciate it if we can,
16 you know, expedite this negotiation as quickly as possible
17 because it's been a long time.

18 They said they understood it but, you know, they
19 just had to have the time and he is a busy guy but he will
20 make it as fast as he can.

21 Q Is that what he said, he is a busy guy?

22 A Yes.

23 MR. KAUFMAN: What did the witness say?

24 What was the answer to that?

25 THE WITNESS: I said, yes.

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1 Q (By Mr. Eisenberg) Did Mr. Tolmach or anyone from
2 the company get back to you concerning a new meeting?

3 A No. We had not heard from the company, so we con-
4 tacted the company -- the office contacted the company --
5 contacted the attorney, rather.

6 Q With relation to August 8th, when did you contact --
7 when did the union make contact with the company?

8 A I think a week and a half had passed by, we had not
9 heard from the company in order to make a meeting, so our
10 office started calling the attorney.

11 Q Well, who called?

12 A I believe John Zito called.

13 Q Did Zito tell you anything?

14 MR. KAUFMAN: Objection to what Mr. Zito
15 might have said.

16 That's hearsay testimony.

17 JUDGE WEIL: What's your purpose in adducing
18 that?

19 MR. EISENBERG: Merely background as to explore
20 the dynamics of when and how the next meeting was
21 set up.

22 It didn't occur until a month after the first
23 meeting.

24 JUDGE WEIL: Overruled.

25 Go ahead and answer.

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1 A Yes. I am not generally in the office and the -- we
2 communicate and he told me his message -- his call was
3 returned by -- by Tolmach.

4 He said he was going on vacation and he proposed a
5 meeting for, I believe, the early part of September.

6 Q Do you recall the date?

7 A September 9th.

8 Q Did you take any action concerning this proposed
9 date?

10 A I believe we sent a letter, I just can't recollect,
11 but I think we sent a letter in terms of trying to expedite
12 the setting up of the meetings.

13 Q Was there any agreement on the proposed meeting date?

14 A Yes. Finally, we finally agreed to a date. We had
15 no choice.

16 Q Mr. Colavito, did you receive any information that
17 you had requested at the August 8th meeting prior to the
18 September 9th meeting?

19 A I might have received the listing of the -- of the
20 holidays.

21 I might have also received the wage increases of the
22 employees or lack of wage increases, but the wage increases
23 that took place in that period that I requested of the
24 various employees.

25 Q Do you recall this definitely?

1 A I know we did receive it. I'm not sure if we received
2 it between this meeting or after this meeting.

3 Q Did you receive anything else?

4 A From the company?

5 They may have repeated their fringe benefits programs,
6 fringe benefits paid to employees, maybe they repeated from
7 what they had given us before.

8 Q Well, Mr. Colavito, I show you --

9 MR. EISENBERG: Off the record for one minute.

10 JUDGE WEIL: Off the record.

11 (Discussion off the record.)

12 JUDGE WEIL: On the record.

13 MR. EISENBERG: I offer for identification
14 General Counsel's Exhibit 11.

15 (The above referred to docu-
16 ment was marked General Coun-
17 sel's Exhibit No. 11 for iden-
tification.)

18 Q (By Mr. Eisenberg) Mr. Colavito, I show you General
19 Counsel's Exhibit 11 for identification.

20 Can you identify that? (Handing document to the
21 witness.)

22 A Yes, this is the trust agreement -- pension trust --
23 I guess pension trust agreement of the company's concerning
24 its employees.

25 Q Did someone give that to you?

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1 A Yes, I got it from the company.

2 I don't remember if it was through the mail or it
3 was at one of the meetings.

4 Q Do you remember if it was between the first meeting
5 and the second meeting or an additional meeting?

6 A I don't remember that.

7 MR. EISENBERG: I offer it into evidence.

8 MR. KAUFMAN: No objection.

9 JUDGE WEIL: It's received.

10 (The above referred to docu-
11 ment, heretofore marked
12 General Counsel's Exhibit No.
13 11, was received in evidence.)

14 Q (By Mr. Eisenberg) Mr. Colavito, I show you General
15 Counsel's Exhibit 6 already in evidence.

16 When you said you received the list of holidays, is
17 that what you were referring to? (Handing document to the
18 witness.)

19 A Yes.

20 MR. EISENBERG: I offer for identification
21 General Counsel's Exhibit 12.

22 (The above referred to docu-
23 ment was marked General Coun-
24 sel's Exhibit No. 12 for iden-
25 tification.)

26 Q (By Mr. Eisenberg) Mr. Colavito, I show you General
27 Counsel's Exhibit 12.

28 Can you identify this? (Handing document to the

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1 witness.)

2 A Yes, this was given -- supplied to me by the company,
3 with my writing on there too, though.

4 Q Well, can you tell us what writing on it there is
5 yours and what writing on it is the company's?

6 MR. KAUFMAN: Can we have it identified as to
7 what it is, what it purports to be?

8 JUDGE WEIL: What is it?

9 THE WITNESS: It's a list of the holidays of
10 the company.

11 It's a listing of employees and the wage in-
12 creases received from 1971 through 1974, if any,
13 their health and welfare, which is listed, what kind
14 of policy they have and the vacation program schedule.

15 It has my notes in red and sometimes in pencil.

16 Q (By Mr. Eisenberg) What kind of wage information is
17 on there?

18 A The wage rates for each year of the -- since '71
19 through '74.

20 Q For who?

21 A For all employees.

22 Q Was there any bonus information given?

23 A No, there isn't.

24 MR. EISENBERG: I offer it in evidence as G.C.

25 12.

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1 MR. KAUFMAN: May I see that, please?

2 (Mr. Eis nberg handed document to Mr. Kaufman.)

3 MR. KAUFMAN: May I have voir dire on this?

4 JUDGE WEIL: Yes.

5 VOIR DIRE

6 Q (By Mr. Kaufman) I show you G.C. 12, which has been
7 marked for identification.

8 Could you tell me how did you get into possession of
9 this document? (Handing document to the witness.)

10 A It was given to me by the company.

11 Q When was it given to you by the company?

12 A I think possibly after the second meeting but -- at
13 least after the second meeting.

14 Q After the second meeting?

15 A I believe so, yes.

16 Q When the meeting ended they gave it to you?

17 A No, I'm talking about after the second session, that
18 was --

19 Q Well, did it come to you in the mail? Was it handed
20 to you?

21 Could you explain to us how you got it?

22 A No, I don't remember how I got it.

23 It was given -- turned over to me by the company.

24 Q You don't remember if it was turned over at a meet-
25 ing, if it was turned over between meetings through the

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1 mail --

2 A No.

3 Q (Continuing) -- is that your testimony?

4 A Yes, it is.

5 Q When did you make the notations?

6 Were those made simultaneously when the company gave
it to you?

8 A No, they were made during the course of negotiations.

9 Q Well, at which session were they made out?

10 A Well, they weren't made at a session.

11 They may have been made in terms -- according to
12 some information through what was registered here and
13 expanding on it.

14 Q Which are your notations --

15 A The red and sometimes the pencil in between (in-
16 dicating).

17 Q So that there are red marks which indicate --

18 A Wage increase.

19 Q (Continuing)-- wage increase?

20 A In other words, we have wage rates and I indicate
21 by red how much of a wage increase it was given each year.

22 That's why -- in other words, it doesn't say wage
23 increase. It just gives you wage rates on there.

24 Q I see.

25 So the red indicates the amount of the increase and

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1 you put that in there?

2 A Yes, I did.

3 Q And you don't recall when you put that in there?

4 A Well, I used it during the course of negotiations.

5 Q Did you put it in during the negotiations?

6 A Do you mean during sessions?

7 Q During sessions.

8 A No, they would be there before or after the negotia-
9 tions.

10 Q And --

11 A Before sessions, after sessions, in between sessions.

12 Q You don't remember whether this was given to you at
13 the second meeting or before the second meeting, is that
14 your testimony?

15 A No, I don't recall, that's right, or through the mail,
16 you know, it could have come through the mail too.

17 Q It could have come through the mail.

18 Do you recall discussing the material on this --

19 A Oh, yes.

20 Q (Continuing) -- with the company?

21 A Oh, yes.

22 Q Was there a cover letter that it came with?

23 Did it come in the mail or did it just come with
24 this?

25 A I don't know if it came through the mail. It may

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1 have come through the mail.

2 Q Now, I also see some notations on the back of the
3 document.

4 Would you tell me what that is?

5 It seems to be in ink and pencil with names, Pat
6 Rocco, Bernie.

7 Q Right. It's material that I was using to supply
8 me with preparation for negotiations.

9 I indicated the bonuses at a later date in pencil
10 and I broke it down to wage increases and then it was
11 material to prepare for negotiations, why I was looking
12 for some demands I was making of the company.

13 Q This is the bonuses then?

14 A Yes.

15 Q And you testified this was given to you at a later
16 date?

17 A No, not that.

18 That was put on in the course of negotiations.

19 Q This was put on during the course of negotiations?

20 A Of course. After I received the bonus information
21 from the company.

22 JUDGE WEIL: Let the record show counsel said
23 this, he pointed --

24 MR. KAUFMAN: The page in the back.

25 JUDGE WEIL: (Continuing) -- to the back page.

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1 THE WITNESS: My notes, yes.

2 Q (By Mr. Kaufman) Did you also put in under health
3 and welfare forty-seven cents per family, twenty-seven
4 cents per hour?

5 A Forty-seven dollars per family, yes, I put that in.

6 Q You put that in?

7 A Yes.

8 Q And was that given to you at the same time that this
9 document was handed to you?

10 A I don't remember.

11 Q You don't remember when you -- you don't remember
12 when you were told the amount?

13 A Oh, yes. I can remember when I was told the amount
14 but I don't know when I put it in there.

15 Q When were you told the amount?

16 A I think it was at the second session.

17 Q So if you were told it at the second session, did
18 you record it simultaneously on this document as it was told
19 to you?

20 A No, I did not.

21 Q You did not?

22 A No, of course not.

23 Q So you made your notations some time afterwards, is
24 that your testimony?

25 A On this, yes.

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1 Q On this.

2 Do you recall who gave you this document, whether
3 it was Mr. Gitlin or Mr. Tolmach?

4 A I don't know whether I received that at the session
5 or through the mail.

6 Q Would you have any documents in your possession
7 wh. would indicate to you when you did receive this
8 document?

9 A No, I don't.

10 Q Did you make notes at the meetings?

11 A I made some notes, yes.

12 Q Would your notes indicate to you if you had received
13 this document marked G.C. 12 at a meeting?

14 A No, it would not.

15 Q So you didn't make notations when you received docu-
16 ments, is that your testimony?

17 A I made some information -- I made some registration
18 of material received and sometimes I didn't.

19 Q But as to this particular document --

20 A No.

21 Q (Continuing) -- you did not?

22 A No.

23 Q That's your testimony?

24 A Yes, it is.

25 MR. KAUFMAN: I have no further questions on

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1 voir dire at this time.

2 May I inquire from General Counsel as to what
3 purpose this document is being offered for?

4 MR. EISENBERG: For the purpose of a full and
5 complete record.

6 MR. KAUFMAN: Well, that doesn't answer my
7 question I don't believe.

8 JUDGE WEIL: Are you offering all of the matter
9 on that paper or are you offering only that part
10 which --

11 MR. EISENBERG: I'm only offering the submission
12 by the company to Mr. Colavito as to the -- with
13 respect to information requested, only that.

14 I'm not offering it for Mr. Colavito's writings
15 or for any notations that he may have made on it
16 later on during the course of bargaining when certain
17 matters were discussed at that time.

18 JUDGE WEIL: I have not seen the document.
19 Is it possible to distinguish that which he
20 wrote from that which --

21 MR. KAUFMAN: Not entirely.

22 (Mr. Kaufman handed document to Judge Weil.)

23 While some of his writings are in red, others
24 are in pencil.

25 JUDGE WEIL: Pencil is easily distinguishable

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1 from the -- what I assume to be Xerox ink.

2 All right. I will receive it for that purpose.

3 MR. KAUFMAN: May I say, Your Honor, that my
4 problem with this document, and I would like to
5 raise an objection, is that Mr. Colavito has been
6 unable to testify as to when he received this docu-
7 ment and General Counsel's questions to him when he
8 showed him this document related to responses to
9 Mr. -- responses to Mr. Colavito's demands for
10 material between the first and second meeting.

11 Now, there is an inference on the record that
12 this document purports to be that and Mr. Colavito
13 has been unable to identify it as that document.

14 JUDGE WEIL: There is no such inference on
15 the record.

16 I can only infer from the evidence on the
17 record and I don't infer anything from counsel's
18 statements or objections, so I don't draw such an
19 inference or try possibly to even reach it.

20 I will receive the document.

21 (The above referred to docu-
22 ment, heretofore marked
23 General Counsel's Exhibit No.
24 12, was received in evidence.)

25 MR. KAUFMAN: May we go off the record for a
second; Your Honor?

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1 JUDGE WEIL: Off the record.

2 (Discussion off the record.)

3 JUDGE WEIL: On the record.

4 Q (By Mr. Eisenberg) When did the next meeting take
5 place after the August 8th meeting?

6 A September 9th.

7 Q Where did it occur?

8 A In the company office again and -- in the company
9 attorney's office.

10 Q With respect to all the meetings, did they occur in
11 more than one place at any time?

12 A All our meetings took -- all negotiations took
13 place in the attorney's office.

14 Q Do you recall when the -- when the meeting began?

15 A In the afternoon again.

16 Q Approximately what time, if you can be more specific?

17 A Around 2:00 o'clock, 2:30, something like that.

18 Q Can you recall who was present at the meeting?

19 A Bruce Gitlin was present, Tolmach was present for
20 the company, myself, and I believe Schifano might have
21 been present, Vice President of the union.

22 MR. EISENBERG: May we go off the record for
23 one moment?

24 JUDGE WEIL: Off the record.

25 (Discussion off the record.)

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1 JUDGE WEIL: On the record.

2 MR. EISENBERG: It's my understanding, Your
3 Honor, that the parties are willing to stipulate
4 that Bruce Gitlin, heretofore unidentified, is
5 Vice President of the company.

6 MR. KAUFMAN: No objection.

7 JUDGE WEIL: Very well.

8 Q (By Mr. Eisenberg) Mr. Colavito, do you remember
9 approximately how long this meeting transpired -- took
10 place?

11 How long was the period of time of the meeting?

12 A I think it was about three hours.

13 Q Can you tell us precisely what happened at the meet-
14 ing as to discussions between the parties and precisely
15 what was discussed and who made the statements?

16 A There was a little discussion on one of the employees
17 that was fired, one of the members who was active with the
18 organization, and the balance of it was on the contract
19 and the company went through the entire contract, I believe,
20 section by section.

21 Q What contract are you referring to?

22 A Our proposed contracts.

23 Q Do you remember exactly what was said?

24 A I -- whatever I can do from my memory, I will do the
25 best I can. In terms of the company's positions on the

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1 various sections of the contract.

2 Q Well, do you remember precisely what was said?

3 JUDGE WEIL: You keep using the word precisely.

4 I doubt if he has verbatim notes from which
5 he can recall precisely.

6 MR. EISENBERG: Okay.

7 THE WITNESS: I am disturbed by the word. It's
8 not a sensible question.

9 Q (By Mr. Eisenberg) Can you tell us what either Mr.
10 Tolmach or Mr. Gitlin said to you and what you and Mr.
11 Schifano said to them with respect to all the sections of
12 the contract that were discussed?

13 A Well, I did all the talking for the union.

14 With the preamble was the successor and assigns,
15 the company did not want to have that incorporated in the
16 contracts, and they felt it would tie them down in terms
17 of possible sale and did not give them flexibility.

18 Our position, of course, was that we needed an ex-
19 tensive contract proposals and I was interested in getting
20 the company's position but I did respond very briefly to
21 some of their positions on what my position was.

22 The men had a long stay with the company, they had
23 some vested rights there, and that if it was a successor-
24 ship, we would want certainly the successor to abide by
25 the contract.

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1 They also objected to the section which was bargain-
2 ing unit.

3 The company wanted the unit as described in the
4 election representation case and we wanted a broader in-
5 terpretation of the unit because of the -- of the work --
6 we wanted the work to be included as well as the unit --

7 Q Did you respond to this?

8 A Yes. I mean I am just saying what -- what I am say-
9 ing is what we wanted, this is my response very briefly.

10 Q Who did the talking for the company?

11 A In -- I think in ninety-nine percent of the case --
12 ninety percent of it --

13 Q At this meeting?

14 A At this meeting, the company attorney.

15 Q With respect to each item of the contract that was
16 discussed, your contract, your proposal, can you tell us
17 what Mr. Tolmach said and what you said, if anything?

18 A Well, that's --

19 Q Continue.

20 A That's what I am trying to do.

21 On the bargaining unit again, I said we wanted the
22 work covered as well as the -- we didn't want to be nailed
23 down to if the company moved its plants any distance away
24 that the men would lose and the union would lose its rights.

25 On section 2, which dealt with the international

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1 agreement, agreeing to the contract as to its form, the
2 company objected and they said it gave the international
3 too much power.

4 I said it really didn't mean that, but we would get
5 back to it.

6 Q What was the specific discussion, do you remember?

7 A They would give the international, Washington as
8 they put it, too much power.

9 We said they didn't get involved in the various
10 clauses. They would be looking out for the form of the
11 contract and that's our long experience with the internation-
12 al. They shouldn't have any apprehension on that.

13 On the bargaining, on union recognition --

14 Q What was said?

15 A Section 3 --

16 Q What was said with respect to union recognition?

17 A The company objected to either clause for the same
18 reason they objected to the bargaining unit, number one,
19 which was that they wanted to go by the unit as described
20 in the representation election that took place some years
21 back and we got bargaining rights, you know, or the company
22 was ordered to bargain with us on and we thought that in
23 that discussion that we would be able to resolve union
24 recognition once we agreed to -- if we can work out some
25 things agreed to on unit -- section number one.

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1 So we didn't have too much discussion on that.
2 That's about what the general consensus was.

3 On Section 4, which dealt with union security, the
4 company said they had no problem with that.

5 Section 5 --

6 Q Do you know who said that?

7 A I said that the company attorney did all the talking,
8 with the exception of perhaps --

9 Q Do you remember what his words were in that regard?

10 A Pretty much that.

11 There should be no problem with Section 4.

12 Section 5 --

13 Q Section 4 was what?

14 A Union security.

15 Section 5, the same question, there should be no
16 problem with that. They just wanted to --

17 MR. KAUFMAN: What is Section 5?

18 THE WITNESS: I am going to say --

19 Q (By Mr. Eisenberg) If you could, Mr. Colavito, in-
20 dicate to us what actually was said?

21 A I will if --

22 Q Describe what the various sections are that you are
23 talking about.

24 A I will.

25 Section 5 is the check off.

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1 The company said they had no problem with that, ex-
2 cept that they would want something which would provide for
3 the authorization of the check off, and I said -- and the
4 time period involved in that withdrawing, and I said that
5 the section does incorporate such a provision, such con-
6 cepts and, you know, it's -- it meets it so there shouldn't
7 be any problem with that.

8 On Section 6 they said -- which is hours of work --
9 that they recognize that the language, even though it in-
10 corporates a seven and a half hour day for the first shift,
11 basically is really an eight hour day and they're not too
12 much disturbed by that, except we may have developed some
13 problems about language, and I said yes, it does incorporate
14 based on an eight hour day.

15 They did pose, however, a question of the changing
16 of shifts whereas by mutual agreement in the contract, in
17 our proposal, they wanted it to be done unilaterally, they
18 felt it was a management function and they wouldn't agree
19 to a clause that incorporated by mutual agreement a chang-
20 ing of the starting and quitting times of the plants.

21 Q Do you know what the clause with respect to starting
22 and quitting time says?

23 A It says that the starting and quitting time of the --
24 of the employees, I guess it would be, can be changed by
25 mutual agreement between the union and the company, and I

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1 said they didn't -- they wanted it to be done unilaterally,
2 if there was going to be any changes in shifts.

3 I said, "if the union -- if they're worried about the
4 union, they can change the language to say between the
5 company and men and we would accept that.

6 Q What between the company and the men?

7 A The changing of the shift hours, the starting and
8 quitting time. I said, we have no objection --

9 Q Did either Mr. Tolmach or Mr. Gitlin have any re-
10 sponse to that?

11 A Well, they said that they wanted to keep that as a
12 management function, that was their position to it, and
13 then we passed on to something else.

14 Q Do you recall anything else that was discussed at
15 this meeting?

16 A Well, the overtime, I believe they were opposed to
17 the whole section and --

18 Q What section of the contract is that?

19 A It's the overtime section.

20 Q Do you know what section it is located?

21 A Section 7.

22 I am going down -- right from the beginning, one, two,
23 three, four, and so forth.

24 Q Is that the way it was done at the meeting?

25 A Yes. The company kept going through our contract and

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1 went right down the line.

2 There might have been some discussion on one or two
3 points of Section 7.

4 Q Do you recall what that was?

5 A Well, they were strongly opposed to any overtime
6 that deviated from the rule of after eight hours -- only
7 after eight hours of work was put in -- only after forty
8 hours, whereas our contract provides for overtime shall
9 be before regular or after regular starting or quitting
10 time and any work done before regular starting time and any
11 work done after quitting hours our contract provides for
12 overtime rates and --

13 Q I am a little unclear.

14 Could you tell us what the union's -- the company's
15 or Mr. Tolmach's response was about that part of the over-
16 time?

17 A They wanted to pay only overtime on the basis of a
18 man working eight hours or if the man worked forty hours.

19 In other words, if a man didn't work Friday, Saturday
20 would be straight time.

21 That was the company's policy and they wanted to
22 maintain that policy, whereas our contract, as they knew
23 and as they pointed out, was before or -- the regular hours
24 and after the regular quitting time.

25 They were worried about it being abused.

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1 I said, we have it in all our shops. It's not being
2 abused. We never had any complaints about it.

3 Q Was there any other discussion concerning the over-
4 time proposal?

5 A Some discussion on the stewards being one of the
6 employees working overtime, whenever overtime was worked.

7 Q What was the discussion?

8 Who said what?

9 A The company opposed stewards being given any kind of
10 preferential treatment or anything like that.

11 We said it wasn't a question of preferential treat-
12 ment, it was a question of a principal of having a steward
13 on the job and that the employees worked --

14 Q What was the preferential treatment you referred to?

15 A The company felt there was -- a steward was getting
16 preferential treatment by being one of the employees work-
17 ing whenever overtime was being worked.

18 Our position was there should be a steward on the
19 job whenever employees are working and that was the basic
20 reason for it.

21 Q Was there anything discussed that you recall concern-
22 ing overtime rates?

23 A I believe they told us what their rates were on over-
24 time and they were different than ours.

25 Q Can you recall what was said?

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1 A No, except I know that they didn't agree to our
2 provisions of double time for Saturday and double time
3 for Sunday and double time for after quitting time on
4 Friday.

5 Q Anything else? What about holidays?

6 A Yes. On holidays they said that they didn't pay
7 three -- triple time for holidays.

8 I don't remember what their rate was, it was either
9 two or two and a half times the holiday rate.

10 Q Did they make any proposal with respect to rates?

11 A No, no proposal made by the company at this meeting.

12 They just voiced their position for, against, or
13 whatever their position was.

14 Q Do you recall if there was ever a proposal with re-
15 spect to overtime rates?

16 JUDGE WEIL: Keep your voice up.

17 MR. EISENBERG: I am sorry.

18 A Meaning throughout the entire negotiations?

19 Q Yes, and I direct your attention to the first one,
20 do you remember the first proposal -- first statement?

21 MR. KAUFMAN: Objection.

22 The first question asked by General Counsel
23 was, was there ever any such proposal made. We
24 don't have an answer to that and now he's directed
25 his attention to the first proposal.

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1 JUDGE WEIL: I wouldn't think you'd object.

2 MR. EISENBERG: I can rephrase it.

3 JUDGE WEIL: But -- I guess you better.

4 MR. EISENBERG: I will do it.

5 Q (By Mr. Eisenberg) Did the company ever make a pro-
6 posal concerning overtime rates?

7 A Yes.

8 Q When was the first proposal?

9 Was it at this meeting or at other meetings?

10 A No, I think it was at another meeting or in the --
11 in the -- in a draft proposal, if you will.

12 Q Can you recall if anything else was discussed con-
13 cerning overtime?

14 A No, I can't.

15 Q Would anything refresh your recollection?

16 A My notes might.

17 Q Would your notes?

18 A My notes might.

19 MR. EISENBERG: At this time, Your Honor, I
20 would ask that Mr. Colavito be allowed to look at
21 his notes for that session.

22 I will show them --

23 JUDGE WEIL: Yes, he may.

24 MR. EISENBERG: (Continuing) -- to counsel.

25 JUDGE WEIL: Yes, he may.

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1 THE WITNESS: I must refer you to that --
2 they may be incorporated -- sometimes my notes are
3 incorporated in draft proposals and sometimes also
4 later on they would be incorporated in the -- in the
5 draft proposal of the company.

6 MR. EISENBERG: I see.

7 THE WITNESS: My notes -- these are separate
8 and apart from them.

9 According to my notes, we had covered the
10 question of notification of overtime --

11 Q (By Mr. Eisenberg) Well, after having read the notes,
12 do they refresh your recollection whether anything else
13 was discussed concerning --

14 A Yes.

15 Q (Continuing) -- overtime?

16 A Yes. We discussed the question of refusing to work
17 overtime, which is one of the subsections of the contract.

18 We discussed the question of -- I should say we --

19 Q Well, what was discussed, see if you can tell me
20 what was discussed?

21 A We got a company response on these various subsections.

22 I think of all the subsections, they only agreed to
23 one subsection, they had no problem with.

24 Q Which one --

25 A Notification they objected, the question of being

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1 notified -- notification for overtime.

2 Q What kind of notification, what are you referring
3 to?

4 Can you be more specific, please?

5 A When the employees are required to work overtime,
6 there is a -- the contract proposal suggested being given
7 four hours notice, I believe, and they objected to that
8 because of the nature of the kind of work and the customers
9 they had.

10 I think in this case Bruce Gitlin got involved and
11 said, we get orders that come in sometimes the last part
12 of the day and we have to tell the guy, look, stay tonight,
13 and my response was, well, what do you do if a man can't
14 make it, what's been the past practice.

15 They said, well, it's never been a problem. I mean,
16 most of the people stay. If the man can't do it, there's
17 enough flexibility within the work force and the employers
18 to handle a hot situation because they were ready for
19 small -- small increments of labor but they were opposed
20 because of this problem that they faced, you know, that
21 they would get a last minute order by a customer.

22 Q Do you remember any other provisions of the contract
23 that were discussed?

24 A Well, we -- we discussed very briefly their -- they
25 took a position against the rights of an employee to refuse

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1 to work overtime for the same reason, because they had a
2 small business and they wanted to be able to keep as
3 efficient as possible.

4 Q Well, what were they commenting in regard to when they
5 took that position, with respect to the contract?

6 A The overtime section.

7 Q Well, what part of the section?

8 A I said on -- there is a provision in the section--
9 I think it's the last subsection of Section 7, which gives
10 the employees a right to refuse to work overtime.

11 They didn't want to incorporate it in the contract.
12 They wanted to be free to be able to discipline an employee
13 if he did refuse to work overtime.

14 I pointed out because of the nature of today's
15 society and people do have problems and some people oppose
16 working overtime in principal and if they have no problems,
17 certainly the contract wouldn't give them any problems.

18 Most workers want to work overtime anyway because
19 of the high cost and especially since their rates of pay
20 were not exactly average, below average for those skills.

21 Q Were any other sections of the contract discussed?

22 A Of this Section 7?

23 Q No, of the entire contract proposal.

24 A We went through almost the entire contract at this
session.

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1 Q Tell us what else transpired at the meeting with
2 respect to any and all discussion that you can now recall?

3 A The next section, which is Section 8 which deals
4 with holidays, there was a difference between our thirteen
5 holidays and the company's ten and a half and we had some
6 discussion on that --

7 Q What was the discussion?

8 A The company says that they were only paying that
9 many and that's all they wanted to, and we said it was
10 below average and that certainly especially in this area
11 for the kind of work they did, and that we -- we think the
12 employees are entitled to more holidays.

13 They also were against the provision in our contract
14 which dealt with a man receiving -- being eligible for a
15 holiday, they wanted a restriction that a man had to work
16 a day before or/and day after unless it's not provided for
17 that, except for new employees.

18 Q What was your response?

19 A My response was that we have this clause in all our
20 other contracts and if they're worrying about abuse, it
21 was not being abused. Most people are responsible.

22 If they had someone who is abusing it, they're proba-
23 bly abusing other aspects of his work record and certainly
24 that would show up in time, but by and large, you know, it
25 was discriminatory and our people resented it.

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1 Q Was there anything else concerning any other sections
2 of the contract that were discussed?

3 I'm not just referring to holidays -- I am referring
4 to anything else concerning your proposal.

5 A We discussed Section 9, which deals with reporting
6 pay, and basically they had no objection to it, except to
7 subsection D and --

8 Q What was the discussion, can you remember?

9 A No, I really don't.

10 Q Anything that would refresh your recollection?

11 A All I know, it deals with Section D on the question
12 of limitation, I think it probably refers to a man gets on
13 a job and --

14 MR. KAUFMAN: Objection to the witness testify-
15 ing as to what he probably --

16 A All right.

17 Q Do you want to see them?

18 A I can look at the contract, but I think --

19 JUDGE WEIL: Show him General Counsel's 5 and
20 hand me the duplicate.

21 (Mr. Eisenberg handed document to the witness.)

22 Q (By Mr. Eisenberg) Would you take a look?

23 A Yes, it's on page 9, Section 9.

24 It does deal with the question of an employee gets
25 hurt on a job, and it provides for visiting the doctor

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1 because of that injury and the company wanted a limitation
2 on how many times he can go to the doctor on that injury,
3 and also provides for his rights to obtain compensation
4 hearings without losing pay, both these things deal with
5 the question of not losing pay as a result of going to the
6 doctor because of that injury or going to the compensation
7 hearing as a result of that injury.

8 The company disagreed and they wanted to limit this.

9 Q What was the limit they wanted, did they tell you?

10 A No, he just said they wanted a limitation on it.

11 Q No more specific?

12 A At this meeting I don't remember if there was any
13 specific proposal on their part in this respect.

14 Q Did you make any response?

15 A Well, my response was that the employees were hurt
16 on the job, there was some responsibility of the company
17 here, why should he lose pay as a result of it.

18 There wasn't a -- much of a chance of abusing it.

19 Probably the company was doing this already, paying
20 for employees to go to the doctor because they're hurt on
21 the job, and why should they object to it.

22 That's about it.

23 Q Was anything else discussed during the meeting?

24 A Yes, we -- we discussed grievances, which is the next
25 section, Section 10, grievances and arbitration.

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1 The company wanted a -- they were opposed to our pro-
2 posals. They wanted a grievance set up which provided for
3 steps and time limits.

4 Q Did they say exactly what they wanted?

5 A We had no proposal from them, but they wanted a frame-
6 work of steps between grievance procedures, as well as a
7 time in between one step and another, and they wanted
8 instead of the A.A.A., they wanted the Federal Mediation
9 to be the final panel for arbitrators.

10 Q Did you have any response?

11 A Yes. I said, this was a small company, as most of
12 our companies we had under contract were -- were, and a
13 step procedure and a time limitation procedure was really
14 artificial for a company like this.

15 Generally an informal setup worked well and things
16 were resolved on the basis of that, rather than getting
17 involved in technicalities.

18 Q What next happened? What next was discussed?

19 A And my comment on the Federal Mediation was that
20 we were told we had no experience with it -- I as an
21 official that is, that the A.A.A. seemed to be preferable,
22 but we would check that part out.

23 The next section was no strike clause section and the
24 company says it was opposed to it and we didn't get into
25 much discussion on that.

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1 It's a hard section to deal with and we just moved
2 on to the next one.

3 Section 12 dealt with plant visitation, the company
4 wanted to know whenever a union representative would be
5 visiting the plant.

6 We opposed it. We said that in all our plants our
7 people visited the shop and if there was a problem, they
8 informed the company representative when they were, so
9 there was always communication. Our people were very
10 busy and they had to get in and out of a plant fast, but
11 they certainly wanted the right to be able to investigate
12 conditions, if they had to do so.

13 The company was pretty strong about that and they
14 said that they didn't want interference with production.

15 I said, look, our people don't interfere with pro-
16 duction, there's too much responsibility, they have a lot
17 of plants to visit, they can't afford to spend time and they
18 only do what's necessary for administration of the contract.

19 Then we go to Section 13.

20 Q Which is what?

21 A Seniority.

22 We provide for -- in our proposal giving them a
23 thirty day probationary period. They wanted a longer one.

24 They felt they would want to have a much longer pro-
25 bationary period.

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1 Q Did they say how much they wanted?

2 A I know they did come out for a hundred twenty day
3 probationary period.

4 Q Was it at this meeting?

5 A Whether it was at this meeting or not, I don't re-
6 member.

7 Q Would your notes refresh your recollection?

8 A No, it doesn't say here.

9 They just said the probationary period they wanted
10 lengthened.

11 It doesn't say whether they wanted a hundred twenty
12 or not in these notes.

13 My response was it's a custom in our industry, it's
14 not a mass production industry, our people in a very short
15 period of time -- anyone with knowledge of the skills and
16 responsibilities as being applied by workers, which seemed
17 a very short period of time, whether the man has the ability
18 to meet certain requirements of the company, and they felt
19 otherwise.

20 They stressed the fact that people grew with the --
21 with the company, stressed the fact that a man would come
22 in with certain skills but they want to see over a period
23 of time whether those skills can be applied and were con-
24 sistent over a period of time, versus a -- you know, a
25 thirty day period because a man came in, had to become

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1 familiar with their kind of work.

2 My position was that no matter how skilled people
3 were, there was always unfamiliarity with a shop and its
4 method of organization and method of work and I couldn't
5 see where that's always a matter to be adapted to but
6 basic skills and work habits of a man would show up in a
7 very short period of time and that could be easily ascer-
8 tained.

9 We got nowhere on that.

10 Q Did the company take any other positions concerning
11 seniority?

12 A Yes.

13 We have -- I think it's Section 8, four reasons for
14 a break in seniority and one was if a man moved out of the
15 bargaining unit. The company wanted more flexibility
16 there.

17 They wanted the man to retain his seniority if he
18 ever came back into it, so he wouldn't have a break in it.

19 Our position was it's -- is to encourage people to
20 move up, that was their motivation for it. Our position
21 is if a man had to make up his mind, in all fairness to
22 employees that remained, he had to make up his mind if he
23 wanted to move up he was taking certain chances. It wasn't
24 fair to other employees for him to have two bites at the
25 apple.

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1 Q Do you recall if anything else was discussed with
2 respect to your seniority proposal?

3 A Well, the system of seniority provides for a classi-
4 fication system and seniority within classification and
5 that promotions is -- is based on the seniority also, as
6 well as layoff and recall.

7 Q Did the company say anything?

8 A And they opposed that, which was subsection B.

9 Q What did they say?

10 A They didn't want a seniority system.

11 They would want to be able to be flexible, whether
12 a new man came in and had qualifications and move him up
13 fast and know the man, and we said, as long as the people
14 had the qualifications to perform the work, the man was
15 there, the most senior man should get the first crack at
16 the promotion.

17 JUDGE WEIL: Excuse me.

18 Off the record.

19 (Discussion off the record.)

20 JUDGE WEIL: On the record.

21 I am sorry I interrupted you.

22 THE WITNESS: I was on 13 -- I believe Section
23 13.

24 MR. EISENBERG: You were talking --

25 THE WITNESS: About promotions.

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1 MR. EISENBERG: About seniority, that's cor-
2 rect.

3 A Yes, promotion.

4 The company wanted a more junior employee, if he was
5 a more qualified man, to give him the first crack at the
6 promotion.

7 We said, as long as two employees who had the qualifi-
8 cations performed the work, the senior -- more senior em-
9 ployee should be given first crack at it.

10 Q Do you recall anything else that was discussed about
11 seniority?

12 A No.

13 Q Do you know what -- do you recall if anything con-
14 cerning notice of layoff with respect to seniority was
15 discussed?

16 A Yes.

17 There was a question of one day's work notice when
18 an employee is laid off, and the company's position was
19 that they weren't for that.

20 We thought that was only fair for an employee to be
21 given at least that much time so he can get himself set
22 and -- to get himself set in terms of recognizing he was
23 being laid off, as well as looking for another job.

24 Q But now --

25 A Not it was an extensive discussion on that, just the

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1 company was opposed to it, we gave each other our posi-
2 tions and basically that was what the position was.

3 Q Now, you testified you really didn't recall, correct
4 me if I am wrong and tell me if I am not, anything that
5 was discussed concerning -- concerning overtime.

6 Do you recall anything about Sunday overtime being
7 discussed specifically?

8 A I do know eventually the company came to a position --

9 Q No, at this meeting.

10 A At this meeting, no, I don't.

11 Q Do you recall anything about two and a half times
12 as a rate?

13 A That was -- that would be for holidays.

14 MR. KAUFMAN: Your Honor, while I understand
15 the witness is using the notes to refresh his recollec-
16 tion, I believe that once a recollection is refreshed
17 the notes should be put away and then, if it's needed
18 again, the witness may refer to them again.

19 The witness has --

20 JUDGE WEIL: I agree.

21 MR. KAUFMAN: (Continuing) -- has a habit of
22 looking down and I would like the record to reflect
23 when he's refreshing his recollection.

24 JUDGE WEIL: Yes, I think it should.

25 I would like you to close your notes between

glances -- in between your necessity of using them.

Q (By Mr. Eisenberg) So you recall something about two and a half times?

A Two and a half times would refer to holiday pay, if a man worked on a holiday.

That would be in Section 8, I believe.

Q Was that your proposal?

A No. That was the -- that was what the company's policy would be.

Q I see.

A That's the company's policy. The company's policy.

Q That's what was said?

A The company's policy.

Q Do you recall other provisions of the contract that were discussed?

A We discussed the leave of absence, which was Section 14.

Q Can you tell us what was said by Mr. Tolmach and what was said by you?

A Basically you had two points of contention with it.

One was with leave of absence which was provided in our proposed contract, a man is allowed a thirty day leave of absence and renewal based on request and an appeal made to the company.

The company position was they would want a limitation,

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1 they wouldn't want a leave of absence to be used for going
2 to work in another company and certainly they would be
3 opposed to, you know, more than -- some kind of limitation
4 on the number of employees who would be out on leave of
5 absence.

6 We said something can be worked out on both areas,
7 and they also opposed a question of pay for three days if
8 a funeral occurs in the person's immediate family.

9 The company might agree to that if it was confined
10 to work days.

11 MR. KAUFMAN: With what?

12 THE WITNESS: If it was confined to work days,
13 if it occurred during work days.

14 In other words -- well, that's what it was any-
15 way, and we said we would discuss this further with
16 them.

17 I didn't get involved in any discussion on it.

18 Q (By Mr. Eisenberg) Was any other proposed clauses
19 discussed?

20 A The next clause was Section 15, which dealt with no
21 discrimination, and the company was opposed to subsection
22 D which dealt with there would be no physical exam required
23 of any regular employee in order to hold on to his job,
24 and they also wanted --

25 MR. KAUFMAN: I am sorry, Your Honor, I am

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1 having trouble following the witness from time to
2 time.

3 Certain words I'm losing.

4 Can I just have that last answer read back?

5 JUDGE WEIL: Yes.

6 (Whereupon, the above referred to answer was
7 read by the reporter.)

8 A To delete the word age from one of the subsections
9 of the contract of that clause.

10 Q Did you have any response?

11 A Yes. We said, first of all, they should -- age --
12 it's the law and we certainly want to include it and the
13 company said they recognize there is a law but they still
14 want to delete it, and we asked them why, and they said,
15 well, we just don't think that we want to be ham strung
16 in relation to putting something in the contract that we
17 don't need in it.

18 In our response, all the companies had it, certainly
19 we don't want to give up something that would protect
20 especially our older employees who spent a number of years
21 with the company over something they weren't going to be
22 fit or desirous for the company and we would certainly
23 want to see that stayed included in the contract.

24 On the question of the physical, we said we can see
25 where under some circumstances a physical could be required

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1 of an employee because he had gone through a heart condition
2 or something like that, and perhaps we can work something
3 out on that, and that's how we left that section.

4 The next section was a -- Section 16 dealt with a
5 vacation.

6 The company -- we have an industrywide vacation fund
7 where people get credit for time spent with various shops
8 in the industry because people are hired in various shops
9 and their skills are required by some companies and his
10 company, Milgo, is typical of a number of other companies
11 we had under contract and, as a result, over the years we
12 developed an industry vacation program and they were flatly
13 opposed to an industry vacation fund.

14 They said they would make some improvements in their
15 vacation but they were definitely opposed to the vacation
16 fund or a program that we had incorporated in the vacation --

17 Q At the specific meeting was any proposals -- specific
18 improvements discussed?

19 A No, no program was made by -- no proposal was made
20 by the company.

21 Q What --

22 A We went on to Section 17.

23 17 dealt with bulletin boards and there was some
24 opposition.

25 They wanted it to be cleared with the company before

1 it was posted.

2 We felt there was no need for it.

3 It related to union matters and matters that dealt
4 with interest to the employees.

5 Q Was that at this first -- at this meeting?

6 A Was that discussed?

7 Q Yes.

8 A Yes. They wanted to confine it maybe to elections --
9 notice of election, notice of a meeting.

10 We said there was -- there was material that was of
11 interest to our members in terms of consumer notice,
12 legislative news and things happening throughout the organi-
13 zation that they had some tie-in with and they were broad
14 and there was no agreement on that.

15 Section 18 dealt with safety and health and there
16 was opposition by the company on some aspects of that
17 section.

18 One reason given was the power given to the safety
19 committee to stop an operation that they considered or
20 once anybody on the safety committee considered as an un-
21 safe situation, a temporary stop in the operation.

22 They felt that could be abused.

23 We said it wasn't abused anywhere because men don't
24 get paid for that time but certainly we could not, you
25 know, expect people to work under a condition and manage-

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1 ment doesn't do anything about it, so a safety committee
2 in the shop -- the clause provided for one, they had some
3 responsibilities to prevent people from being endangered
4 by -- whether it's a machine or material in front of a
5 machine or whatever it may be, and we got nowhere with
6 that.

7 They were opposed to providing safety shoes.

8 They felt safety shoes, instead of a protective device,
9 could be actually harmful and I think here Bruce spoke up
10 again, he felt that safety shoes with the way they're de-
11 signed to -- cause more damage than people without safety
12 shoes and -- and our feeling was and our response was
13 that safety shoes in working with metal and the dropping
14 of metal or various things that take place in the shop
15 certainly offer more protections than some of the dangers
16 he recited because really dropping a plate edgewise on a
17 person's shoe and shearing it because of the -- the in-
18 crease in the shearing effect as a result of a plate
19 dropping edgewise on a foot was an occasion that there is
20 no protection at all on it, and certainly if you have
21 sneakers or other shoes on it would certainly give less
22 protection but in the course of an average day's work
23 safety shoes was a boom to the people who work in the shop
24 and most employees in companies wear such and -- but they
25 were opposed to it and remained opposed to it throughout

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1 negotiations.

2 Q Again, what other clauses of the contract can you
3 remember that were discussed?

4 A Part of the clause of that Section 18 they saw no
5 problem with, part of it.

6 Q Do you know which one?

7 A I think it was C and part of A and part of the last
8 subsection -- I don't remember --

9 Q Can you be more specific?

10 A I am trying to think.

11 I will look at it.

12 Well, this setting up of a safety committee, they
13 weren't opposed to it --

14 MR. KAUFMAN: May I ask what the witness is
15 looking at now?

16 JUDGE WEIL: He's looking at General Counsel's
17 Exhibit Number 5.

18 MR. KAUFMAN: What page, so I can follow it?

19 THE WITNESS: 18.

20 MR. KAUFMAN: Can we have just a minute?

21 JUDGE WEIL: Yes.

22 MR. TOLMACH: Section 18 or page 18?

23 JUDGE WEIL: Page 18.

24 THE WITNESS: Section 18, page 18.

25 MR. KAUFMAN: 18 and 18A -- you are looking at

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1 18?

2 THE WITNESS: 18, yes.

3 Okay?

4 MR. KAUFMAN: Yes.

5 A That they were not opposed to the idea of a -- a
6 safety and health committee.

7 They were opposed to the powers of the committee,
8 shutting the operation down, at this meeting.

9 They were opposed to the shoes, questions of covering
10 fifty percent of the cost of standard safety shoes, even
11 if it was one pair a year.

12 They agreed to C, which provides for each employee
13 should be furnished by the company an individual locker
14 for his clothing and tools and all toilets and wash rooms
15 should be kept in the cleanest and sanitary conditions and
16 should be heated and ventilated, adequate soap and towels
17 should be provided.

18 They agreed to that.

19 They agreed to part of D, which deals with the company
20 should be provided the following, water cooler, milk weld-
21 ing or burning material which is covered with paint
22 galvanized.

23 They would not agree to an adequate exhaust system
24 from welding or dust.

MR. KAUFMAN: Can I see what the witness is

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1 referring to?

2 THE WITNESS: The contract itself. (Handing
3 document to Mr. Kaufman.)

4 MR. KAUFMAN: Okay.

5 Q (By Mr. Eisenberg) Was there any discussion, Mr.
6 Colavito, concerning other clauses of the contract at this
7 September 9th meeting?

8 A Yes, we went through the balance of the contract.

9 Q Can you tell us what was said with respect to each
10 matter discussed?

11 A The next clause I think dealt with the question of
12 bonuses or contract work.

13 They asked the question, did we mean this to cover
14 bonuses other than for production work.

15 We said, no.

16 We had no objection to the company giving bonuses
17 that was not related to production work.

18 That seemed to assure them and we would have no
19 problem with that clause.

20 Q Did Mr. Tolmach or Mr. Gitlin have any response?

21 A Well, that was their -- the question they raised with
22 me, would this prevent the company from giving bonuses
23 out if it wasn't related -- they agreed to -- my response
24 when I told them that it wasn't related to production, they
25 can give out bonuses, well, they said, that's okay then.

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1 Q Any other clauses of the contract discussed?

2 A Section 20 dealt with subcontracting.

3 The company took a flat no. They would not agree
4 to any subcontracting clause, and we felt that it was a
5 very essential thing for the men because the company could
6 subcontract their work out and what the hell good would a
7 contract be to any job they had if they were going to have
8 the work sent out, but it was a strong position the com-
9 pany took and we just passed on to it -- on to the next
10 one.

11 21 --

12 Q Do you recall what --

13 A (Continuing) -- I don't remember what that referred
14 to.

15 Q Could you use anything to aid your recollection?

16 A Just this exhibit, whatever it's called. The con-
17 tract.

18 Yes. Failed fabrication. The company says the
19 clauses doesn't belong in the contract. There is a clause
20 that says that the work is confined to the shop and that
21 it shall not be confined to the job site, employees will
22 not be asked to go on a job site, and the contract doesn't
23 cover that, it's confined to the manufacturing plant.

24 We said it was an international requirement because
25 our international is made up of erection locals who work

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1 on sites, as well as fabricating locals like ourselves,
2 and I said, was this a problem for the company in terms
3 of did they send people out.

4 They said, no.

5 Were employees involved in work outside the shop?

6 They said, well, yes, sometimes they would have to
7 go on a job to supervise the assembly of some of the sculptures
8 that were performed -- made in the shop.

9 I said, what were the rates paid for these people,
10 and they said, whatever the shop rates were.

11 I said, well, in that case I can see the need of the
12 company wanting its employees who are familiar with the
13 job, fabricated, to go on a job, but we have that done in
14 all our shops with this clause, even though we had this
15 clause, where our shop people went on the job and they
16 assisted and sometimes erected work and they did it on the
17 basis of getting a permit from our sister locals and it was
18 no problem, the company paid the prevailing rates; the com-
19 pany said they weren't interested in that, they were just
20 interested in paying the rates they paid all along, what-
21 ever they paid in the shop they would pay on the outside
22 too, and we had a dispute on that.

23 We got nowhere with it.

24 Q Any other clauses discussed that you remember?

25 A The savings clause dealt with the question of -- I

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1 believe it dealt with the question of -- matter of keep-
2 ing records --

3 Q Well, did the company have any response with respect
4 to the savings clause that you proposed?

5 A They didn't want to be confined to keeping records
6 for three years.

7 Their position was that they would do just what the
8 law provided for.

9 Q Are you sure that's the savings clause?

10 A I don't know if that's the savings clause.

11 MR. KAUFMAN: Objection.

12 A I am not sure myself.

13 MR. KAUFMAN: Objection.

14 JUDGE WEIL: Just a minute.

15 On what basis?

16 MR. KAUFMAN: I think that counsel is impeach-
17 ing his own witness, leading his witness.

18 He asked a question about the savings clause,
19 the witness testified about keeping records, and
20 then counsel asked, are you sure that's the savings
21 clause.

22 JUDGE WEIL: I don't find it objectionable.

23 Overruled.

24 A Well, there was a clause, I'm not sure if it incor-
25 porates the question of the records, but the savings clause,

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1 they had no objection to the savings clause, as I remember.

2 I do know that in dealing with the question of when
3 to keep records, it might have been Section 22, they
4 objected to keeping records for three years, as one of the
5 clauses provides for.

6 I don't know if it's 22 or 23, and I said, well, we
7 do have it in all agreements. They said they only wanted
8 to be obligated to what the law provides for.

9 I asked if they knew what the law provides for.

10 They said they did not know, and we both would check
11 it and see if it would create a problem for us.

12 Q Were any other clauses discussed?

13 A Yes. Next -- as I said, either 22 or 23, they're in-
14 corporated in two different agreements, but the savings
15 clause, there was no objection to it at this meeting, if
16 I remember right.

17 Q I believe you already testified to that.

18 A Yes. In Section 24 the company wanted to pass it by,
19 which gives wage rates, minimum rates.

20 Q Would you repeat --

21 A Section 24 deals with wage rates and classifications,
22 minimum rates of pay.

23 The company wanted to pass it by until they were
24 ready for an economic offer.

25 However, we did get involved in the question of job

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1 classifications and descriptions and responsibilities and --

2 Q Can you tell us what was said --

3 A Yes.

4 Q (Continuing) -- with respect to that clause, if you
5 remember?

6 A Again the company said that they -- they didn't
7 operate with a classification system and they saw no need
8 for it, and I repeated my same points made at the last
9 previous meeting, which is that each employee did a cer-
10 tain number of -- performed a number of job skills and they
11 had a basic responsibility -- he operated certain machines,
12 he performed certain hand and machine and layout or other
13 operations, he had a certain background knowledge to be
14 able to deal with some things and if there was no classi-
15 fication system, there would be no minimum rates and there
16 would be inequities in the shop.

17 Q Did you make --

18 A And that would create problems in any experience I
19 had with the question of fabrication.

20 The company felt they would pay a person as they
21 went along and basically they didn't call them by classi-
22 fication.

23 They just gave a man a certain rate of pay and they
24 could say what different people did, but they didn't think
25 they had any need for a classification system.

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1 Q Did you request any information concerning the jobs
2 of the employees?

3 JUDGE WEIL: Are you referring to this meeting?

4 MR. EISENBERG: At this meeting.

5 A I referred them to -- in the course of the discussion
6 on classification and responsibilities, I referred them to
7 our request of getting a breakdown of each employee and
8 basic responsibilities and basic skills by the company
9 and their job operations, and the company said that they
10 would get it to us.

11 We had no -- no way to go in terms of discussion
12 outside of repeating some of the basic philosophies behind
13 the question of the classification system and inequities
14 that developed if there isn't one.

15 Q Were any other clauses of your proposal discussed?

16 A On the next clause, which was the coffee break and
17 rest period clause, the company said they would make a
18 proposal on that and they skipped on to Section 26, which
19 dealt with welfare.

20 They said they were opposed to being part of the
21 industry welfare funds and contributing to it.

22 They were satisfied with what they had -- on the
23 pension system the same thing, they would want not to be
24 part of the pension program.

25 They wanted to retain their own.

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1 Our position was that we would want -- we thought
2 that ours was more secure, as well as better, and we would
3 want the employees to be given that benefit, both the
4 security, as well as the benefit aspect of it.

5 On sick leave they said they would make a proposal.
6 That's the next clause, and they will get to us.

7 On the training fund, which is an industrywide
8 training fund, people want to go to school, improve their
9 skills, as well as the annuity, which is a cost to the
10 company, one for two cents and one was for ten percent,
11 the company said that for the first contract they did not
12 want to be -- have any part of these two programs.

13 The next one was on the trust -- on the severance
14 fund, severance program.

15 The company said they would make a proposal on that
16 in the future and basically I think that's what took place
17 at that meeting.

18 Q Did you make any information -- other request for
19 information during this meeting?

20 A I said I had not received as yet the copy of the
21 welfare program of the company, their basic medical, or
22 whatever it was.

23 Q What specific information did you request?

24 A A copy of what they said they were providing their
25 employees, a copy of the program and everything about it.

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1 Q What about pension, did you make any request in
2 that regard?

3 A I may have received by that time the trust indenture
4 on their pension -- I don't remember.

5 I may have been given the cost of their present
6 welfare.

7 I did not receive a copy of the -- you know -- the
8 projected cost of their pension program.

9 Q Were you given the costs for their pension program?

10 A I don't remember if I was given them or not, but I
11 raised some questions --

12 Q Did you ever get them?

13 A I don't remember. I raised questions of ERISA and
14 what they projected as part of their cost under the new law,
15 and so forth, so I can be in a position to compare with
16 our pension program, and so forth.

17 Q Did you ever get the costs --

18 A No.

19 Q (Continuing) -- for the pension?

20 A No.

21 MR. KAUFMAN: Objection.

22 The witness was asked and answered that.

23 Can I have his last response?

24 (Whereupon, the above referred to answer was
25 read by the reporter.)

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1 Q (By Mr. Eisenberg) Did you make any other request
2 for information at this meeting?

3 A I can't recall.

4 Q Anything about wages at that meeting in any way?

5 A As I said before, I don't remember if I had been --
6 had received the wage rates of the employees over -- since
7 '71.

8 I don't know if that came in at this meeting or in
9 the mail or before this meeting or not, I don't remember.

10 Q Could it have come after -- withdrawn.

11 Was anything said about the company making any pro-
12 posals at this meeting?

13 A The company said they would make some proposals that --
14 they said they would make a proposal on the sick leave.
15 They'll make a proposal on severance. They would get to
16 the wage proposal. They didn't want to do it at that point.

17 They would make some proposal on vacation.

18 I think that's about all in terms of economics.

19 I don't know if they said they would make some pro-
20 posals on language.

21 I don't remember that.

22 Q Was anything -- well, under what circumstances did
23 this meeting break up?

24 A It -- as with most of the meetings, there was some
25 discussion in terms of the hour, if Bruce was present anyway.

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1 there was a question of New York City traffic and getting
2 out and we had some discussion about Dave and myself and
3 in terms of his parking his car in Jackson -- over in
4 Queens and taking the train in, and saving some time, but
5 I think he coupled that sometimes with business in the --
6 in New York, so I don't really know.

7 It varied at various times but there was always a
8 problem with trying to get out of the City before traffic
9 built up.

10 Q So, what happened to terminate this meeting?

11 A At the end of this contract we -- you know, the com-
12 pany would try to call it a day, push, pushing towards
13 the end of the meeting on that basis because of the hasten-
14 ing to beat the traffic, and then we would discuss the
15 question of setting up a next meeting.

16 Q Was a new meeting scheduled at this meeting?

17 A I believe there was another meeting scheduled at this
18 meeting.

19 Q Do you recall when that was for?

20 A I think the 20th.

21 Q Now, do you know if a meeting occurred on September --

22 MR. KAUFMAN: Can we have the time when the
23 meeting ended?

24 THE WITNESS: I don't know when.

25 MR. EISENBERG: I will ask the question.

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1 Thank you, Mr. Kaufman.

2 Q (By Mr. Eisenberg) Do you recall when the meeting
3 ended, the time?

4 A It would be around the 5:00 o'clock period. Maybe
5 after or before.

6 Q Did any meetings ever go back -- much past 5:00
7 o'clock?

8 A No, I don't believe so.

9 This might have been one of the latest meetings,
10 this one.

11 Q Was there a meeting on September 20, as you had
12 arranged?

13 A Well, I don't really remember.

14 I have nothing to reflect outside of a meeting date
15 being set up whether a meeting took place on the 20th or
16 not, so I don't recall.

17 Q Do you have any idea?

18 A No, except as I said, the meeting date was jotted
19 down in my notes and I have no notes that would -- that I
20 could refer to anything taking place, the meeting may have
21 taken place or we might have gone over these points again
22 or it might have been a very short meeting where the com-
23 pany gave us some proposal, written proposal, and I really
24 can't recall.

25 Q Did you ever receive written proposals from the com-

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1 pany?

2 A Yes, I did.

3 Q Can you recall when the first time was?

4 A I think it was some time in October -- the latter
5 part of September or October some time.

6 Q So, it could have been -- never mind, withdrawn.

7 MR. EISENBERG: I offer for identification
8 General Counsel's Exhibit Number 13.

9 (The above referred to docu-
10 ment was marked General Coun-
11 sel's Exhibit No. 13 for
identification.)

12 Q (By Mr. Eisenberg) Mr. Colavito, I show you General
13 Counsel's Exhibit Number 13 for identification, which con-
14 sists of several attached documents.

15 Can you identify these documents? (Handing documents
16 to the witness.)

17 A These were draft proposals by the company to us.

18 Q When did you receive them?

19 A I believe that they weren't received all at one time
20 but periodically we got some and we got some others added
21 to it, shortly right after each other, not --

22 Q Can you give us a time frame when you got these,
23 from when to when?

24 A Well, I would say that between the first time we got
25 them -- it might have been the latter part of September,

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1 probably through October, the early part of November proba-
2 bly, in that period of time.

3 Q Who gave them to you?

4 A Dave Tolmach.

5 Q Where were you when you received them?

6 A In his office.

7 Q Under what circumstances?

8 A In the course of negotiation he would say, I have
9 got some proposals for you.

10 I would look at the company's proposals and that's
11 how we got them.

12 MR. EISENBERG: I offer them in evidence as
13 General Counsel's Exhibit 13.

14 MR. KAUFMAN: Voir Dire?

15 JUDGE WEIL: Yes.

16 VOIR DIRE

17 Q (By Mr. Kaufman) Again, Mr. Colavito, directing your
18 attention to these proposals, I notice that there are hand-
19 written notes. Are those notes yours --

20 A Yes.

21 Q (Continuing) -- that you added?

22 A Yes.

23 Q And they were added at various times?

24 A Yes.

25 MR. KAUFMAN: Is this being offered for the notes

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1 that are attached to it?

2 MR. EISENBERG: No.

3 MR. KAUFMAN: Just for the typewritten --

4 MR. EISENBERG: Just for the typewritten matter.

5 Q (By Mr. Kaufman) Now, starting with Section 1, start-
6 ing with the section entitled bargaining unit --

7 A Right.

8 Q (Continuing) -- could you tell me when that was hand-
9 ed to you?

10 A No, I can't. I really can't say because they were
11 given -- they were given to me in groups and batches.

12 I don't have a record of it.

13 Q And you didn't make any notation as to when they --

14 A No, no.

15 Q Starting with Section 2, recognition --

16 A 3.

17 Q Well, the section marked recognition.

18 A Oh.

19 Q Do you know when that was handed to you?

20 A No.

21 Q Would it be fair to say that if we went through every
22 section you would be unable to state when it was given to
23 you?

24 A Yes, that's right.

25 Q And you have no records that would reflect when it

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1 was given to you?

2 A No. The only record I would have says I received
3 three clauses at one time, that's about the only record
4 I have.

5 It doesn't say which ones.

6 Q I show you the back, which is on paper that is smaller
7 than --

8 A Right.

9 Q (Continuing) -- the other paper, the rest of the
10 paper is eight by fourteen and this is eight and a half
11 by eleven, the final two, three sheets, was this also given
12 to you by Mr. Tolmach or is this your language?

13 A It's our language on one of the sheets. That's this
14 one, the termination, and it was given to me by Mr. Tolmach.

15 This is not ours (indicating).

16 Q That is not yours?

17 A No, it is not.

18 Q And it is your testimony that you cannot recall with
19 any specificity on the dates that these were given to you?

20 A No, only within a range of, you know, meetings.

21 JUDGE WEIL: We will take five minutes while
22 you straighten this out.

23 MR. KAUFMAN: Okay.

24 (Whereupon, a recess was taken at 2:54 o'clock
25 p.m.)

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1 (Whereupon, the hearing reconvened at 3:04
2 o'clock p.m.)

3 JUDGE WEIL: On the record.

4 Did you get the documents straightened out?

5 MR. KAUFMAN: Well, we do not have in the
6 document that was turned over to us the last three
7 pages.

8 MR. EISENBERG: I may have neglected to photo-
9 stat those last three pages, Your Honor, and if that
10 is the case, I will make the appropriate corrections
11 and supply such for the copies that I supplied in
12 evidence to the Respondent.

13 JUDGE WEIL: Very well.

14 Q (By Mr. Kaufman) Would you look at this document
15 and tell me if the sections that are listed here were all
16 given to you between the end of September and the beginning
17 of November?

18 A Sure.

19 Q Just look at the titles. (Handing document to the
20 witness.)

21 A Did you want me to just look at the titles, not some
22 of the contents?

23 Q Well, if you have to look at the contents to see if
24 that's what was given to you, look at it.

25 A Because there might be some changes with second and

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1 third drafts.

2 Q Sure.

3 A Section 14 may not be -- may not be -- I can't tell --

4 Q Excuse me?

5 A I am really not sure.

6 Q You are not sure?

7 A No.

8 Q What was Section 14 on?

9 A Leave of absence.

10 I can't be sure about all of it but most -- I can
11 tell you which ones I'm more sure than others.

12 Q Now, you testified that you have no recollection of
13 whether there was a September 20th meeting or if there was,
14 what happened, is that correct?

15 A That's correct.

16 Q And were all of these documents given to you at meet-
17 ings?

18 A The first drafts, yes.

19 Q So that which is contained herein were given to you
20 at meetings?

21 A I am saying as I have that made up as a first draft,
22 all first draft documents were given to me at meetings.

23 Q Let me ask you this, are these first drafts?

24 A I'm not sure possibly about one or two of the sections.
25 I can't say for sure.

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1 Q Which two are you not sure about as being first
2 drafts?

3 A I can really deal with the ones that I am more sure
4 of, maybe I can do it that way.

5 Grievance and arbitration I am sure of, that's Section
6 10.

7 Q Grievance and arbitration?

8 A Yes.

9 Q Grievance and arbitration you are not sure of?

10 A Management rights clause I am not sure.

11 Q What clause was that?

12 A Management rights.

13 Q Management rights?

14 A The recognition clause, Section 3. The bargaining
15 unit, Section 1.

16 Section 9.

17 Q What was that?

18 A Reporting.

19 Q Now, I notice that you are giving section numbers.

20 Were those section numbers attached to the original
21 drafts?

22 A No.

23 Q Are those the numbers you gave --

24 A I put in. They conformed as we have it with our pro-
25 posed agreement because we talked about both agreements. We

CSA Reporting

1 discussed the --

2 Q So numbers that appear next to it are numbers you
3 put on in order to correspond with your proposals?

4 A Right.

5 Q Okay.

6 You had reporting. What else?

7 A Section 13.

8 Q What was that?

9 A Seniority.

10 I'm not sure on leave of absence. That's Section 14.

11 I'm not sure about Section 15.

12 MR. TOLMACH: What's that?

13 THE WITNESS: No discrimination.

14 A I don't recall any other -- Section 16 is also one
15 I'm not sure of.

16 The others I don't recall. I may have something in
17 my notes that might help me.

18 MR. TOLMACH: What's 16?

19 THE WITNESS: Vacation.

20 Q (By Mr. Kaufman) You testified that you recall the
21 following sections as being original drafts of this docu-
22 ment.

23 Grievance and arbitration, management rights, recogni-
24 tion, bargaining unit, reporting and seniority, Is that
25 correct, and the rest you don't recall whether they were

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1 original drafts or not, is that right?

2 A Perhaps from my notes I can tell.

3 Q You have notes on that?

4 A I might have notes that deal with some discussion.

5 Q Let me ask you this, were all of these original drafts
6 given to you at bargaining sessions?

7 A Yes, all original drafts that I have are original
8 drafts that were given at bargaining sessions.

9 Q You testified they were given to you some time in
10 either September or early November.

11 How many bargaining sessions were there during that
12 period of time?

13 A We had one -- at least one in the latter part of
14 September.

15 Q What date was that?

16 A I believe the 29th.

17 Q September 29th?

18 A The 20th also. As I said, I don't recall that meet-
19 ing.

20 Q Okay.

21 So you don't recall that meeting, the one in September?

22 A The middle of September, September 20.

23 Q You recall --

24 A 29.

25 Q (Continuing) -- the end of September?

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1 A The 29th.

2 Q Do you have notes from that?

3 A Yes, I have some notes.

4 Q Okay.

5 Do you recall -- would looking at those notes re-
6 fresh your recollection as to which demands were given to
7 you?

8 A I don't know if they refer to it.

9 They may do it on the basis of discussion that took
10 place.

11 It may show that the company's proposals was discuss-
12 ed.

13 Q Well, do you have your notes here from September 29th?

14 A I think I do.

15 Q Please look at them and tell us whether or not you
16 could now tell us what proposals were made by the company
17 that are part of General Counsel's Exhibit 13 in evidence --
18 for identification.

19 A I talked too quick it looks like.

20 Frankly, I don't -- my notes don't even show a Septem-
21 ber 29th meeting.

22 Q If I told you that September 29 was a Sunday, would
23 that refresh your recollection that there was no meeting
24 on the 29th?

25 A Yes.. Yes.

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- 1 Q Could you tell me --
- 2 A The next meeting was the 7th of October.
- 3 Q 7th of October?
- 4 A Yes.
- 5 Q Do you have notes from that meeting?
- 6 A Yes.
- 7 Q Could you look at those notes and tell us whether
- 8 or not that refreshes your recollection as to which docu-
- 9 ments were given to you --
- 10 A Surely.
- 11 Q (Continuing) -- at that time?
- 12 A It says, gave us three clauses on October 7.
- 13 Q Just three clauses?
- 14 A That's what it says. A management rights discussion
- 15 took place there.
- 16 Q But it doesn't say if management rights was given to
- 17 you as one of the clauses?
- 18 A I would deduct from that --
- 19 Q I'm not interested in your deduction. I am interest-
- 20 ed --
- 21 A No, it doesn't say that.
- 22 Q I am interested in your facts.
- 23 A No, it doesn't say that.
- 24 Q Fine.
- 25 A But if we discussed it, it would be --

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1 MR. KAUFMAN: I move to strike as not respon-
2 sive, Your Honor.

3 JUDGE WEIL: I will strike from the word but
4 on.

5 Q (By Mr. Kaufman) Would you just look at your notes
6 and tell me by looking at those notes if it now refreshes
7 your recollection as to which demands were given to you --
8 which proposals were given to you by the company which are
9 part of G.C. 13?

10 A No, the only thing that would strike a note would
11 be the question of -- I have management rights down and --

12 Q So you are unable to tell by looking at your notes
13 from the October 7th meeting which demands were given, is
14 that correct?

15 A No, that's correct.

16 Q When was the next time that there was a meeting?

17 A The 16th or 17th of October.

18 Q 16th or 17th of October.

19 Do you have notes from that meeting?

20 A Yes.

21 Q By looking at the notes from that meeting, can you
22 tell me which proposals which are part of G.C. 13 were
23 given to you at that time, if any?

24 A No, they would not show.

25 Q When is the next meeting after that?

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1 A November 4th.

2 Q Do you have notes from November 4th?

3 A Yes, I do.

4 Q By looking at those notes, can you tell me which
5 demands which are part of General Counsel's Exhibit 13 were
6 given to you at that time?

7 A No. The way the notes are written they would reflect
8 the company's positions but it wouldn't say if it was a
9 proposal, a drafted proposal or not.

10 Q So that would it be a fair statement to say that
11 from your notes and from your recollection you cannot testi-
12 fy with specificity as to any of the documents before you
13 marked General Counsel's 13 for identification as to whether
14 they were given to you or not given to you during the Septem-
15 ber 20th, October 7th, October 17th and November 4th meet-
16 ing, is that correct?

17 A No, I wouldn't put it as blanket as that.

18 I do know we did receive them, that they were used --
19 both documents was used, ours as well as theirs.

20 Q And --

21 A And in terms of being precise, any specific clause
22 or notice, I can't say that, no.

23 Q The only ones you can recall getting is grievance and
24 arbitration, management rights, recognition, bargaining unit
25 and seniority from looking at those, General Counsel's 13,

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1 is that correct?

2 A Well, there might be a couple of others in terms of
3 language that I -- see, how I got them and what I did was
4 I generally stapled the sheets together and --

5 Q So that as they gave them to you, you stapled the
6 sheets together?

7 A I eventually put them all together.

8 Q And that represents putting them all together,
9 General Counsel's 13?

10 A As I said, I may have a wrong sheet in here, but
11 basically that's the bulk of the stuff I got before the
12 period of -- before December, before the second draft in
13 the beginning of the next year.

14 MR. KAUFMAN: Your Honor, usually I'd have no
15 objection to receipt of this material.

16 However, the witness cannot identify when it
17 was given, whether they were original or counter-
18 proposals on this document, or what the document
19 really purports to be, except for six items, and for
20 that reason, since it cannot be authenticated as to
21 what the document is, unless the document was separated
22 and offered as to the individual items that the witness
23 could identify, I would object to the introduction of
24 the entire document.

25 JUDGE WEIL: Now, I have two ways I can handle

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1 it, I can either tear it apart and take those only
2 he can authenticate or I can ignore the rest.

3 I think I will ask you to take them apart.

4 I will receive those portions of that document
5 that the witness can testify were received by him
6 during that period of time.

7 THE WITNESS: I --

8 MR. EISENBERG: Your Honor --

9 THE WITNESS: I can be helpful.

10 MR. EISENBERG: I think the witness sufficiently
11 authenticated the documents by identifying them as
12 original proposals that were handed to him from the
13 company.

14 He can't accurately or specifically place the
15 time he received each one, but I don't believe --

16 JUDGE WEIL: He can't specifically place the
17 time he received any one.

18 He can place it within the time frame you gave
19 him, which I suppose is meaningful to you since you --
20 you gave it to him.

21 With regard to some of the documents he can and
22 specifically cannot with regard to others, leaving a
23 few apparently still in limbo.

24 THE WITNESS: Well, I can differentiate on the
25 basis of the various drafts since I participated in

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1 the entire negotiations and I can see the differences
2 that took place between the second draft, the first
3 draft and the third draft. I can do that.

4 It's on the basis of elimination I can confine
5 it to this period.

6 I can do that because some of these are repeti-
7 tious and some deal with a word being inserted and
8 I can see in the course of negotiation when that word
9 was inserted.

10 I can handle it that way.

11 JUDGE WEIL: But you are not able to at this
12 time?

13 THE WITNESS: No, unless I studied it in much
14 more detail.

15 JUDGE WEIL: You have a choice.

16 You can either tear it apart and offer those
17 which the witness has identified or you can give him
18 further time, not on our time, to go over this so that
19 he can satisfy himself and identify all of them.

20 MR. EISENBERG: I will take the latter approach.

21 JUDGE WEIL: Okay.

22 MR. EISENBERG: And if I decide to reintroduce
23 them, I will.

24 Q (By Mr. Eisenberg) Mr. Colavito, can you recall the
25 date of the next negotiating session after the one you

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1 recently discussed?

2 A It would be the -- after the 20th would be the 7th
3 of October.

4 Q And do you recall how that meeting was arranged?

5 A No, I don't -- I don't think I can at this point.

6 Q Do you know when it started?

7 A In the afternoon.

8 Q Do you know how long it took?

9 A Probably a couple of hours the most.

10 Q Who was present at this meeting?

11 A Dave Tolmach was present, I was present, I'm not sure
12 if Bruce was there, I would have to refer to notes, if I
13 have it recorded at all.

14 Q Would the notes refresh your recollection?

15 A Yes.

16 Q Would you refer to notes for us?

17 A Yes, Bruce was present.

18 Q Excuse me?

19 A Bruce was present.

20 Q And that was it?

21 A Yes, Dave, Bruce and myself.

22 MR. KAUFMAN: Your Honor, again the witness is
23 reading his notes from the meeting before having dis-
24 cussed the meeting.

25 I know, Your Honor has asked the witness not to

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1 do that and I know it's not intentional, but the notes
2 are right there open to the meeting.

3 JUDGE WEIL: As a matter of fact, he just went
4 over those same notes at your request for another
5 matter, so I would assume they were pertinent to that.

6 MR. KAUFMAN: That's correct, Your Honor.

7 JUDGE WEIL: But keep them -- keep them out
8 from under your eyes when you are not using them.

9 MR. EISENBERG: If you want to turn them over,
10 Bill, maybe that would be the best thing.

11 Q (By Mr. Eisenberg) Can you tell us what transpired
12 at that meeting with respect to everything that was dis-
13 cussed by -- at that meeting by the participants from start
14 to finish?

15 A Well, I think I would have to refer to the notes.

16 Unfortunately, unless there is something to set off
17 a meeting from another meeting, I would have to sort of
18 refer to notes on some of the things that took place in
19 order to get an idea of what transpired and the scope of
20 what transpired.

21 I just couldn't do it independently because some of
22 these things did overlap.

23 Some of these things are very familiar and similar
24 with all the meetings, the question of when they broke up
25 and started, and the causes for their starting and how they

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1 got set up or, more basically, how they terminated.

2 If there was some reason, like some meetings stand-
3 ing out more because of the starting negotiations or a
4 big lapse between negotiations, they would stand out more
5 in my mind.

6 MR. KAUFMAN: Your Honor, I hate to interrupt
7 the witness' statement, but certainly it's not re-
8 sponsive to General Counsel's question.

9 JUDGE WEIL: If the witness has to look at his
10 notes to refresh his recollection, I believe that's
11 what the answer was related to.

12 THE WITNESS: Right.

13 JUDGE WEIL: I think it is and I think he gave --
14 just gave some explanation of why.

15 MR. EISENBERG: With Your Honor's permission --

16 JUDGE WEIL: Yes, he may look at his notes.

17 THE WITNESS: Okay.

18 MR. KAUFMAN: May I see what the witness has
19 used to refresh his recollection?

20 (The witness handed a document to Mr. Kaufman.)

21 MR. KAUFMAN: Thank you. (Handing document to
22 the witness.)

23 Q (By Mr. Eisenberg) Have you looked at the notes,
24 Mr. Colavito?

25 A Yes.

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1 Q Do they refresh your recollection?

2 A To some extent.

3 Q I ask you again, can you tell us what transpired at
4 this meeting from start to finish with respect to every-
5 thing that went on and everything that was said by the
6 participants?

7 A I'll try.

8 We started at the beginning of the contract again
9 and we got as far as Section 10 or 11 of the contract.

10 We dealt with the successor and assigns clause and
11 again some of the same arguments were reiterated by both
12 sides.

13 The company's position on the successor and assigns,
14 they didn't want to be bound by a possibility of getting
15 a buyer because a contract had to go with it, the employees
16 had to go with it, and our position was one in which the
17 employees had a right to protection under the law, as well
18 as a moral right to be protected if the company was bought
19 over by somebody else.

20 We got nowhere with that. Each side reiterated its
21 position.

22 On bargaining unit, the same way, we took similar
23 kinds of positions we took in the past.

24 The company didn't want to be tied down to moving it-
25 self.

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1 Q Can you explain that, what do you mean?

2 A Well, the bargaining unit talks about the -- not
3 only the question of -- the company's position was that
4 it was to be confined to this address where the plant was,
5 ours was --

6 Q What did they say?

7 A They said if the company would move somewhere else,
8 at least when we sort of smoked it out because they wanted
9 the -- what was provided for under the representation
10 election, it confined it -- it confined the bargaining
11 rights to the plant and address, and we didn't want that
12 restriction.

13 Q Did they say what would happen if the plant moved,
14 what their position would be?

15 A Well, they wanted to be free to move without being --
16 carrying the burden of some employees and the union going
17 with them.

18 Q Did you make a response?

19 A Yes, I did.

20 I said the men had, as well as the union, had the
21 rights that we wanted to protect and all our contracts
22 provide for such protection, both the employees and for
23 the union, and -- well, they just couldn't see it as far
24 as management goes, they felt it was their right to fight
25 along those lines.

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1 MR. KAUFMAN: What was that?

2 Can you read?

3 THE WITNESS: It was their right to fight along
4 management's lines and its rights, giving itself as
5 much leeway as possible.

6 Also, we wanted the work to be covered.

7 Q (By Mr. Eisenberg) Can you explain that? What did
8 you say and what did they say?

9 A Well, our position was that we wanted the work -- the
10 language of our proposal covered the question not only the
11 rights of the employees but also the employees being covered
12 by the contract but also the work to be covered by contract
13 because the company could farm out its work and the employees
14 can be left with no jobs as a result of it.

15 So we wanted to be covered for the work that was be-
16 ing done.

17 They could contract out some of the work and we wanted
18 it to be done by the employees, the work should be covered
19 by the contract too.

20 They didn't buy that. They just wanted strictly to
21 maintain itself along the lines of the representation elec-
22 tion and we felt that it had certain limitations in terms
23 of protection of the people.

24 Q Was anything else discussed in -- with respect to
25 the bargaining unit?

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1 A I don't remember.

2 Q Was anything discussed about field work?

3 A Yes.

4 In terms of the field work, we told them that the --
5 the language is in there to protect the sister locals of
6 our international, the international required it.

7 It was no problem in terms of the operation of the
8 companies because all our companies we dealt with had
9 it, a lot of their people worked on the outside on erection
10 and this arrangement worked out for that and since they
11 were in a limited area on that, you know, it shouldn't be
12 no problem for them.

13 Q Was any other clauses discussed during this meeting,
14 any other matters discussed? If so, could you tell us what
15 they were and what the parties said?

16 A Again we dealt with Sections 3 --

17 Q Which is?

18 A Which is the union recognition, and again both sides
19 felt that this could be handled once we settled Number 1;
20 which was bargaining rights.

21 They raised the question within that of plant clericals
22 and we felt that could be handled --

23 MR. KAUFMAN: What was that? I am sorry.

24 THE WITNESS: Plant clericals.

25 MR. KAUFMAN: I didn't -- they raised the ques-

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1 tion about?

2 THE WITNESS: About plant clericals being in-
3 cluded in the recognition clause.

4 A On Section 4, which is union security, their position
5 seemed to have been different.

6 They said that Mack said we might get that one, I
7 don't know what -- I don't know what his title is, I guess
8 the principal, father -- brother of Bruce, leave it up to
9 the workers, whatever they want to do. If they want to
10 join the union, it's up to them.

11 Q Who said that about union security?

12 A Tolmach.

13 Q Can you tell us exactly what he said?

14 A He said Mack said, look, you know, I told you at the
15 last meeting in terms of union security, Mack is raising
16 some problems with it, he said, I would like -- rather
17 leave it to the worker if he wants to join, it's up to
18 them. If he doesn't want to join, it's up to them. We
19 have foremen and key people and I want to leave it to the
20 employees to join.

21 Q Was any counterproposal offered to you at this meet-
22 ing --

23 A No.

24 Q (Continuing) -- that you remember?

25 A No, there was no counterproposal, but I reacted -- I

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1 said I couldn't understand his position, about his concern
2 with the rights of the people in the shop, when he -- when
3 he did quite a bit to violate those rights and not recogniz-
4 ing those rights when we're organizing the shop.

5 It took to this day in 1974 where we still have not --
6 the men have not cashed in on what they started to do back
7 in '71.

8 I said, I don't understand his concern. It's a little
9 inconsistent with what he did in the past.

10 He said, that's his feelings, and that's where we
11 stand on that.

12 I think we got into discussion on 6 again, mainly on
13 the question of the changing of shift hours and that they
14 couldn't go along with a mutual agreement on the change to
15 take place on the starting and quitting times.

16 Q Could you tell us what was said, Mr. Colavito?

17 A It was a right of management to set up its own hours
18 and for its own reasons.

19 What I said was you have people living all over the
20 place, Chirst, they have something to say about it or they're
21 concerned about some people come in from Shirley, Long
22 Island, a long, long trip, and people need to be consulted
23 and when you are going to start -- if you are going to make
24 a change, so there should be no problem, you know, your own
25 employees, to work it out between the two of you -- a mutual

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1 arrangement on -- a new starting time and new quitting time.

2 Q Were any other clauses discussed that you remember?

3 A A management rights clause.

4 They said that they would have to have an agreement
5 with a management rights clause in it.

6 Q What was your response?

7 A I said that we didn't have it in any of our agreements
8 and certainly the companies that we had under contract have
9 grown from small companies to large companies and there's
10 been no infraction of their possibility of growing.

11 We were opposed to it in principal too. They were
12 for it --

13 Q Was any management rights clause proposal given to
14 you at this meeting? Do you remember?

15 A It must have been because it was discussed.

16 They didn't raise it in the previous meeting where
17 they went all through our contract.

18 It must have been a counterproposal and we must have
19 had a clause in front of us.

20 Q Do you remember anything else that was discussed at
21 this meeting?

22 A We may have discussed grievance and arbitration pro-
23 cedures.

24 Q Well, did you?

25 A I believe we did.

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1 Q Could you tell me what was said?

2 A They didn't want a steward with super seniority, and
3 they also -- which is provided in our proposal, and also
4 they didn't want to have a system of a discharge of a
5 steward or steward discharged by the company, if we con-
6 tested it, to remain on the job while we proceed with a
7 fast arbitration, which was part of our clause.

8 They said, under those circumstances, to have a
9 steward retained on the job or any employee on the job,
10 if he was discharged, we -- our position was that the
11 steward was a different -- to be treated differently than
12 any other worker, he would have an impact on the rest of
13 the employees if he was discharged, and certainly if the
14 steward had performed some activity which warranted dis-
15 charge, we weren't going to contest it, we only deal in
16 cases where a steward was -- we had a contest or difference
17 of opinion between the company and the union, and we got
18 nowhere with that.

19 They said they wanted him treated like any other worker
20 where if he was right, he would get his back pay, and so
21 forth, and we felt that this distinction had to be made be-
22 tween the two.

23 Q With respect to the steward, did you make any pro-
24 posal?

25 A No, I didn't. No, I didn't. Not that I know of anyway.

CSA Reporting

1 Q Do you recall anything about accelerated arbitration?

2 A Yes, I must --

3 MR. KAUFMAN: I object to these leading questions.

4 MR. EISENBERG: Withdrawn.

5 Q (By Mr. Eisenberg) Were any other items discussed
6 that you can remember?

7 A No, I can't think of anything right now.

8 Q Was the check off in any way discussed?

9 MR. KAUFMAN: Objection.

10 JUDGE WEIL: Overruled.

11 A Yes, I think it was a change there from the previous
12 position by the company.

13 I think they wanted some language to be incorporated
14 in the check off, even though I had said in the past that
15 some of the -- I met their objection by saying that the
16 contract clause covered the question of authorization and
17 withdrawal period.

18 I believe they asked for something beyond that. What
19 it was, I don't recall.

20 It might have extended the period of time in which
21 they wanted withdrawal. In addition, some other language,
22 but I can't recall.

23 Q Was overtime at all discussed?

24 A I don't recall.

25 Q Will referral to your notes refresh your recollection?

CSA Reporting

1 A Yes.

2 We discussed the question of when the company worked
3 overtime on holidays and weekends, the clause provides for--
4 our clause provides for notification to the union and I
5 said we could work something out where if they would tell
6 a steward, it would be sufficient and a matter of after
7 that period of time they could send a notice to the union
8 that they worked a holiday or a Saturday or Sunday, so
9 there was no real inflexibility on this question, we can
10 handle it that way.

11 I believe we also discussed the question of a steward
12 working on the job when there was overtime performed and
13 here again we -- the company's position was there's no
14 reason for -- if there's work for it, all right, that he -- that
15 required overtime, fine.

16 Our position was that a steward should be on the
17 overtime when the employees are working overtime and as
18 long as there was work he could perform, that he should be
19 permitted to work overtime like other employees.

20 Q Can you recall if any other clauses were discussed?

21 A We discussed Section 9 but I don't remember right
22 now what aspect of it was still held up.

23 I think it was on the question of the doctor visit.

24 MR. KAUFMAN: What is Section 9?

25 THE WITNESS: Reporting.

CSA Reporting

1 Q (By Mr. Eisenberg) You had testified that there was
2 also talk about grievance, arbitration issues, right?

3 A Yes.

4 Q Do you recall anything else that was discussed about
5 it, other than what you previously testified to, with re-
6 spect to this meeting?

7 A No, I can't.

8 Q Was anything said about the Federal Mediation and
9 Conciliation?

10 A Well, the original testimony -- mediation versus
11 the A.A.A.

12 Q Was anything said about it at the meeting?

13 A At this meeting?

14 Q Yes.

15 A I have to look.

16 The notes would indicate that the company still had
17 the position on Federal Mediation it had in the past.

18 Q Does it refresh your recollection as to what was
19 said?

20 A It would be the same position, that the Federal
21 Mediation is an agency they use and they have confidence in
22 and was one in which we had never used and, based on hearsay
23 anyway, we were told the A.A.A. had a better track record
24 in terms of the calendar of the arbitrators.

25 Q Do you recall if any other --

CSA Reporting

1 A No.

2 Q (Continuing) -- matters were discussed?

3 A No, I can't.

4 Q Now, you testified that you only went through a few
5 of the sections of the contract at this meeting?

6 A Right. Right.

7 Q Under what circumstances, describe to me how the
8 meeting ended, why it ended?

9 MR. KAUFMAN: Objection to the form of the
10 question.

11 A Why there's --

12 JUDGE WEIL: I will take your testimony as to
13 how it ended.

14 THE WITNESS: Okay.

15 MR. EISENBERG: I will amend my question.

16 A The -- this meeting, like most of them, ended with
17 the company wanting to end it because of the hour and, if
18 Bruce was present, it was always a question of beating the
19 traffic.

20 Q I believe you testified that Bruce wasn't present
21 at this time.

22 Do you remember how this meeting ended, under what
23 circumstances -- wait a second. I may be wrong.

24 A No, I think he was present at this meeting.

25 Q I am sorry. I am sorry. I withdraw it.

CSA Reporting

1 A That's all right.

2 Q Do you remember how the meeting ended?

3 A It was a question of the traffic. He had to beat the
4 traffic because it would build up in the City and it would
5 take him longer to get out of the City -- almost as long
6 to get into -- on the road as out in -- into the Island,
7 and it would always be a problem in terms of trying to end
8 the meeting around a certain time to beat the traffic.

9 Q What time did this meeting end?

10 A It would be four-thirty, quarter to five he would be
11 wanting to get out of there.

12 Q What was your response to that?

13 A My response consistently was, look, the guys have
14 been waiting four years for a contract. We always start --
15 we ought to try to get through the points and get the points
16 settled here. They guys don't understand why we're taking
17 so long.

18 Q What happened after you made that response?

19 A It was to no avail. I had no options but to go along
20 with it because I couldn't protest it, attempt would be
21 made to set up another meeting and it varied from time to
22 time, but I think we set up another meeting for the 16th
23 or 17th and again it depended upon a schedule that the
24 attorney, Dave, had, most of the time anyway.

25 He was really busy on other responsibilities and there

CSA Reporting

1 would be some discussion on that, you know, it would be the
2 first calendar date -- I would sort of meet whatever dates
3 they had available --

4 Q Let's restrict ourselves to this meeting, the October
5 7th meeting.

6 A Okay.

7 Q Can you tell me was there anything discussed about
8 arranging another meeting?

9 A It was agreed to have another meeting on the 16th or
10 17th.

11 Q Can you recall what was said?

12 A Just that -- I mean, this is the only date I have,
13 the first open date I have that --

14 Q Mr. Tolmach said that?

15 A Tolmach.

16 Q Who proposed the date?

17 A Tolmach.

18 Q What was your response?

19 A My response, too much time has passed between meetings
20 but I have no choice but to go along because I had no other
21 option but to go along with the earliest date I could possi-
22 bly get from the company.

23 Q Did you receive any of the information you had pre-
24 viously requested at this meeting?

25 A No, I didn't get the -- I didn't get the classification

CSA Reporting

1 and the job operations at this meeting.

2 I didn't get the revised cost on the pension, in
3 terms of ERISA, and so forth.

4 I didn't get the booklets or the programs of their --
5 of the welfare and pension.

6 I did not receive --

7 Q You hadn't gotten any information that you had pre-
8 viously requested?

9 MR. KAUFMAN: Objection.

10 The witness testified about a lot of information
11 that he's been receiving throughout this whole trial.

12 MR. EISENBERG: It's in the record.

13 MR. KAUFMAN: Well, if it's in the record, then
14 don't ask a question like that.

15 JUDGE WEIL: I will sustain the objection.

16 Q (By Mr. Eisenberg) Did the next meeting occur as
17 scheduled?

18 A It might have been scheduled for the 16th and changed
19 to the 17th, but a meeting took place on the 17th.

20 Q I see.

21 Do you remember when this meeting started?

22 A In the afternoon again.

23 Q Do you recall who was present at this meeting?

24 A I have to look at my notes.

25 Q Would your notes refresh your recollection?

CSA Reporting

1 A No. My notes reflect that it was a very short
2 meeting --

3 Q Well --.

4 A And doesn't reflect who --

5 Q Do your notes refresh your recollection as to who
6 was present?

7 A No, it doesn't reflect who.

8 MR. KAUFMAN: Can I see what the witness is
9 looking at?

10 (The witness handed a document to Mr. Kaufman.)

11 MR. KAUFMAN: Thank you. (Mr. Kaufman handed
12 a document to the witness.)

13 THE WITNESS: Right.

14 Q (By Mr. Eisenberg) Do you know when this meeting
15 ended?

16 A It was a very short meeting.

17 It started about 2:30, I think.

18 Q What's very short?

19 A About an hour and a half, two hours at the most.

20 Q Can you tell us what transpired at this meeting?

21 A Well --

22 Q Do you remember?

23 A The only thing I can recollect, the question of --
24 we discussed Section 12 and Section 13.

25 Section 12 deals with the plant visitation and we

CSA Reporting

1 had --

2 Q What was said by you and/or Mr. Tolmach or anybody
3 else that was there concerning this?

4 MR. KAUFMAN: Objection.

5 Since the witness has been unable to testify
6 who was there, I object to the question what was
7 said by Mr. Tolmach when he was there.

8 MR. EISENBERG: Withdrawn.

9 A Well --

10 Q Was there any representative of the company that was
11 present at all the meetings that actually occurred?

12 A Dave Tolmach was present at all the meetings that
13 occurred, negotiations with Local 455.

14 Q Will you tell us what transpired at this meeting of
15 October the 17th, 1974?

16 A We discussed Section 12, which deals with the plant
17 visitation, and the company wanted the union to announce
18 beforetime or call up beforetime when it was coming to the
19 plant, and we strongly objected to it on the basis of --
20 their position was they didn't want anybody walking into
21 the plant. They wanted advance notice.

22 Our position was that we did not have that arrange-
23 ment with any company, our guys were responsible, as soon
24 as they got to the plant they informed management that
25 they were there, they got in and out as quickly as they

CSA Reporting

1 could because they had a big responsibility, a lot of
2 shops to cover, and sometimes it was very necessary that
3 the company should not know we were coming in the plant
4 because on that basis -- that way we did find a number of
5 times conditions that were being covered up, sometimes
6 with the threat of an employee, sometimes with the connivance
7 of employees, so we had to limit it in the contract, that's
8 the way we could do it.

9 We had to have no bugle calling official that would
10 walk in the plant and visit the plant and make sure the
11 contract was properly administered.

12 Q Do you remember how long the discussion was about
13 this item?

14 A It must have went on at least a half an hour.

15 Q Was anything else discussed at this meeting?

16 A We discussed Section 13 and we got into a discussion
17 on --

18 Q What is Section 13?

19 A Seniority.

20 Q Can you tell us what was discussed and what was said
21 concerning seniority at this meeting?

22 A A lengthy discussion took place on the question of
23 using older employees or more junior to more senior em-
24 ployees in lower classification, that was older employees
25 in higher classifications doing the work -- more junior

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1 employees in the higher classification doing the work of
2 more senior employees in a lower classification, especially
3 while on layoff, and the company felt they had the -- they
4 wanted to have this right to continue to do so.

5 There was even contradiction in the way they operate
6 their plants, very few people got laid off, people did grow
7 into higher classifications to some extent in their plants,
8 but we certainly couldn't have them hire a new employee in
9 a higher classification, while so many people with their
10 two, three, four or five years were going to be laid off
11 while they did their work.

12 We knocked that around for quite a while without
13 getting anywheres.

14 Q Do you remember what else was said, if anything?

15 A No, I can't think of -- I know we had a long discus-
16 sion on this issue and there might have been more expanded
17 positions on it, but we did discuss this issue quite ex-
18 tensively.

19 Q Was any other matter relating to a contract discussed?

20 A We may have raised -- I'm not sure -- the question
21 of information that was going to be supplied to us by the
22 company.

23 Q Well, do you know if anything else was discussed?

24 A I can't think of anything.

25 Q Would anything refresh your recollection?

CSA Reporting

1 MR. KAUFMAN: Is the witness referring to the
2 same document he's already referred to?

3 THE WITNESS: Same document?

4 MR. KAUFMAN: Yes.

5 THE WITNESS: Yes.

6 A No, my notes don't show me anything else. They don't
7 reflect -- they don't recollect for me anything.

8 Q Now, can you recall when or why -- withdrawn.

9 Do you recall how this meeting broke up?

10 A In the same manner.

11 The question of people have to leave to beat the
12 traffic, and let's schedule another meeting, and so forth,
13 on that basis.

14 Q Did you make any response, can you remember?

15 A I'm afraid I can't. I mean, I was not too happy
16 with the idea with short meetings and periodically I would
17 reiterate that, but I'm not so sure if I said so at this
18 meeting.

19 Q Was there anything about a subsequent meeting or a
20 resumption of the meetings discussed?

21 A We would discuss the next meeting and --

22 Q What was --

23 A We would --

24 Q What was discussed concerning the next meeting after
25 this October 17 meeting?

CSA Reporting

1 A The earliest possible date.

2 Q Well --

3 A And the company attorney would look at their calendar
4 and see what date was first available, and on that basis
5 we would generally set up a meeting.

6 Q Mr. Colavito, did Mr. Tolmach say anything about a new
7 meeting?

8 A About what?

9 Q About a meeting after this October 17th meeting.

10 A He would just point out which meeting would be next
11 that he can have.

12 Q Did he say something in that regard?

13 A Well, the reason that --

14 Q What did he say?

15 A When we got into the discussion of his calendar, I
16 don't remember exactly which place he was running to, but
17 he had heavy responsibilities in Alaska, in Hawaii, in
18 Pennsylvania, and that's where most of his time seemed to
19 be between our meetings.

20 Q Did he propose a date?

21 A I don't remember if the next date was set up on that
22 basis or not. He might have proposed a date, he probably
23 did.

24 Q Do you know whether a date was scheduled?

25 A I believe a date was scheduled. I don't know if it

CSA Reporting

1 was done at the meeting.

2 Q You don't know if it was done at the meeting.

3 Would the notes refresh your recollection?

4 A Yes, the notes would. I have a date down for it,
5 November 4th, so it was agreed at that meeting it means.

6 Q Did the next meeting occur as scheduled?

7 A Yes, it did.

8 Q Do you remember what time of day it commenced?

9 A In the afternoon again.

10 Q Had every time you had arranged a meeting, was a
11 date or a time, rather, during the day arranged also?

12 A Yes.

13 Q When did this one occur?

14 When did this November 4 meeting occur, what time?

15 A In the afternoon.

16 Q Several of these meetings -- as a matter of fact,
17 all of them you testified occurred in the afternoon.

18 Do you recall why?

19 A The company either -- either the company or the attorney
20 and generally both, once in a while the attorney would not --
21 the company would not be able to appear, and I know some
22 meetings were not set up as a result of that, the company
23 had a previous date -- appointment.

24 Q With respect to the afternoon, do you know --

25 A After the meetings, because the attorney was busy,

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1 he had a heavy schedule and the employer had to get some
2 work done in his place of business.

3 Q Did you ever make a response?

4 A My response was that, you know, the company said
5 they would just do whatever they had to do by law, whatever
6 requirements the law provided for, that's all they had to
7 do. They wouldn't agree with me.

8 I was looking for more longer meetings and more
9 consistent meetings and more consecutive meetings and I
10 didn't have the possibility of enforcing the company to
11 do so, that's all.

12 Q Going back to the November 4th, 1974 meeting, how
13 long did it last, do you know?

14 A A few hours. A few hours.

15 Q Do you recall who was present?

16 A I have to look at the notes.

17 MR. EISENBERG: Mr. Kaufman, do you want to see
18 what he's looking at?

19 MR. KAUFMAN: Yes.

20 JUDGE WEIL: Off the record.

21 (Discussion off the record.)

22 JUDGE WEIL: On the record.

23 Who was present?

24 THE WITNESS: Dave Tolmach, Bruce was not there,
25 myself and Schifano for the union.

CSA Reporting

1 Q (By Mr. Eisenberg) Just for the purpose of the
2 record, could you identify Schifano?

3 A Vice President of the union.

4 Q What's his full name?

5 A Anthony Schifano.

6 Q Can you tell us what happened at this meeting as to
7 what was discussed, what was said by the participants at
8 this meeting from the start of the meeting to the end of
9 the meeting?

10 A Well, I would have to look quite a bit at these
11 notes because they deal with a lot of subsections of various
12 sections.

13 Q Do they refresh your recollection?

14 A I would have to almost use them.

15 JUDGE WEIL: Use your notes and tell us what
16 they recall to you.

17 THE WITNESS: Right.

18 A During the course of the meeting the company said
19 that whatever economic offer they would make, it would be
20 based on -- it would cover all the -- all economic costs.

21 I raised a question, well, would it cover coffee
22 breaks or reporting pay increases because you could in-
23 terpret it as an economic cost.

24 They said, no, it would exclude those.

25 That was one thing we discussed a little bit.

CSA Reporting

1 Q Was that all that was discussed about that?

2 A Around that, yes.

3 Q How did that come about?

4 A I think it came about through a proposal by the com-
5 pany on vacation improvement --

6 Q Can you recall what was said?

7 A I am going to do that.

8 Q Thank you.

9 A The company said that they had a program of one for
10 one or two for two or three for lead men and they were
11 going to --

12 Q Can you be more specific? I don't understand what
13 you mean.

14 A One for one week's vacation, one year's service, two
15 weeks' vacation two years of service, and three weeks for
16 their lead men, those in that lead men group classification,
17 or whatever you want to call it, and they would improve
18 it to the point of making it three weeks for eight years
19 of service for all employees, and that was the only improve-
20 ment.

21 That was as far as they would go as far as improving
22 on vacation.

23 Q What was your response?

24 A Our response was we certainly wanted a more liberal
25 vacation program and that we prefer if they would stay --

CSA Reporting

1 join the vacation fund so people could get past service
2 credits and if they lost --

3 MR. KAUFMAN: I am sorry, the last --

4 THE WITNESS: People --

5 MR. KAUFMAN: Can the reporter just read that
6 back very quickly?

7 (Whereupon, the above referred to answer was
8 read by the reporter.)

9 A If they lost their employment with the company because
10 of a temporary layoff and they went to another company, and
11 some of his employees were in age, they wouldn't have to
12 start all over again as a one year man or less than one
13 year man.

14 Some of his employees were members of our union pre-
15 viously, they had some service within the industry.

16 The employer had gotten the benefit of their skills
17 and we had to develop a vacation fund after many, many
18 years which recognized these problems and we would prefer
19 a vacation fund but we would, you know, discuss it further
20 with them, the question of vacation program, the vacation
21 fund.

22 I am looking at the notes. I mean --

23 Q Just tell us what you recall.

24 A Okay.

25 Q About what was discussed and what was said.

CSA Reporting

1 A We started with the Section 13, because I believe it
2 was a continuation of the -- of our last meeting, we had
3 gotten as far as Section 13 and we had gotten into some
4 additional subsections.

5 Q What is Section 13 again, for the record?

6 A Seniority.

7 Q What was said?

8 A On Section 13B, which deals with the question of
9 the rights of employees on layoff and recall, as well as
10 promotion, the company wanted some change that seniority
11 would prevail if the employees could perform the work in
12 question.

13 We said we had no objection to modifying the clause
14 to cover that concept.

15 That was agreed to.

16 Also, the company, in terms of the trial period for
17 promotions, they wanted a change of -- we had a trial
18 period of thirty days.

19 There was a question of how that could be interpreted,
20 they had to give them a trial period of thirty days, guaran-
21 teed a trial period, where a man was -- obviously was going
22 to fit the bill, why did they have to wait thirty days, and
23 we said we had no objection to making it up to thirty days,
24 as long as a guy got a fair crack to show either he did or
25 did not have the skills or knowhow to meet the company's

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1 requirements or the job's requirements, so we agreed to
2 that proposal and within that we also discussed the concept
3 of a new guy who was more qualified than the employee --
4 an older employee who had skills, who had the qualifications
5 but they felt the new man would have more qualifications,
6 better qualified.

7 We maintained our position that as long as the man
8 was qualified, he should be given first crack at promotion.

9 The company's position was well, the man should --
10 if he has more qualifications, it would be in the interest
11 of the company to pick out the more qualified person, even
12 though the junior -- the senior employee had the qualifi-
13 cations and skills, and we had a hold on that.

14 We couldn't get too far with that.

15 The company agreed to our Union D.

16 Q Could you explain what was said?

17 MR. KAUFMAN: Objection.

18 Is it necessary to have what was said and just
19 be cumulative?

20 The company agreed to D.

21 JUDGE WEIL: Is there something special you
22 want there?

23 MR. EISENBERG: A little bit.

24 JUDGE WEIL: Do you recall what they said?

25 THE WITNESS: Well, it was agreed as long as

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1 we add -- I have to refer to the contract what D is because
2 my notes do not indicate that.

3 It dealt with a question of if a new operation came
4 into the company, they asked why would -- do you want the
5 more senior employee to be given the first crack at being
6 assigned to the new operation or a new machine.

7 We felt that it was necessary because if they took
8 a junior employee to put on a machine, a new machine, and
9 he became the only one able to handle it because of his
10 training with the company, that they could by that let go
11 a more senior employee in the same classification.

12 So, we felt the best way would be to either train
13 everybody or give the more senior employee the first crack
14 at that.

15 They wanted some language added providing he could
16 perform the work, which we agreed to.

17 We agreed to put some language on that clause and
18 on that basis they agreed.

19 The company agreed without any modification on F.

20 MR. KAUFMAN: What number was that?

21 A F, 13F, that all probationary employees be laid off
22 first before regular employees are laid off.

23 The company had no objection to that.

24 The company also agreed to G, about posting seniority
25 lists every two months. The company agreed to that.

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1 On H and I, H dealt with the question of classifica-
2 tion and we both decided that until we agreed to a classifi-
3 cation system or what we were going to do with a classifica-
4 tion, there was no sense in discussing that further, and I
5 dealt with the question of notification of layoffs and they
6 felt or was sympathetic, he wanted to wait until Bruce --
7 he was able to touch base with Bruce on it.

8 It dealt with giving a guy one day notification on
9 layoffs.

10 Q Were any other clauses discussed?

11 A Right. We discussed 14.

12 Q Can you tell us what was said by you and by Mr.
13 Tolmach?

14 A They raised a new objection --

15 MR. KAUFMAN: Is this a new section now?

16 THE WITNESS: Yes.

17 A They raised a new objection with 14, and that is that
18 under previous discussion he had no objection to a part of
19 Section 14A, which provided that when a man wanted a leave
20 of absence it would be signed both by the steward and the
21 company. He objected to the steward signing it.

22 He would only agree that the steward should receive
23 a copy. It was a new objection and I -- and I didn't quite
24 get his reasons for it, why he objected to it.

25 He felt that, you know, it requires some kind of formal

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1 approval and he wanted to avoid that.

2 You know, to me it sounded somewhat academic, like
3 it -- it just didn't have a bearing in real life and that
4 was not our experience in real life.

5 A man wanted a leave of absence and the company is
6 required to give it to him, the only thing we want, to
7 make a record of it, and that's the reason the steward
8 signed it and I couldn't understand why the company would
9 take the position the steward would only get a copy of it
10 and not participate in the signing of it.

11 I proposed as to a previous objection one limitation,
12 I proposed one limitation which they accepted -- in other
13 words, no more than one man in each classification would
14 be permitted to take a leave of absence at one time, and
15 they accepted that.

16 They agreed to our B.

17 Q Do you know what that involves?

18 A No. I think it has to do with union -- members --
19 employees in the shop that require a leave of absence be-
20 cause of some union activity. I think that's what B deals
21 with.

22 Yes. They agreed to that, and they agreed to the
23 first part of C, which deals with the question of taking
24 tests and being paid for the time for testing taken because
25 of license required.

CSA Reporting

1 Q Do you recall what Mr. Tolmach said and your response
2 in that regard?

3 A He agreed to the question of time off for license,
4 but they didn't agree to the aspect of it being done on
5 the basis of taking the more senior employees for it.

6 In other words, we would want the more senior employee
7 to be given the first crack at it because the license again
8 could be a -- some form of -- by which some junior employees
9 can be retained or senior employees are laid off because
10 they didn't have the qualifying license that the City or
11 any other body would require from a welder or any other
12 type of activity, so there was a hang up on that.

13 They agreed with one part and disagreed with the
14 other part of it.

15 On the funeral leave they agreed to the immediate
16 family, except not to include a brother and sister-in-laws.

17 The rest of it was okay, according to the company.

18 Q What did you say?

19 A They would exclude -- I said, you know, it was imme-
20 diate family, a wife's sister or brother, you wouldn't have
21 a husband working if there was a death in the family, usually
22 a wife depends upon her husband to take care of arrangements
23 and, you know, it would be a loss to the employee and we
24 all consider that and union employees consider that as
25 immediate family and we didn't know why the company, you

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1 know, would leave that out, especially how little it would
2 happen.

3 Q Did Mr. Tolmach have a response?

4 A Well, they agreed that the -- it should be considered
5 as immediate family but that was the company's position.
6 They weren't going to go any further on that.

7 The rest was okay, except that those two points --
8 those two categories.

9 On 15, which is the no discrimination, they agreed
10 to the first as in the past, to the first three subsections,
11 A, B and C.

12 They wanted age to be deleted again from one of the
13 first three and they did object to the contract language
14 protecting present employees from taking a physical.

15 We thought it might be -- it might be used as a means
16 to have -- depriving employees of their rights in their
17 job and that was our experience in the past, that's how
18 the clause came into being. The company -- though I do
19 recognize under some circumstances the company could have
20 a legitimate reason for employees who are out sick for
21 serious illness or heart attack going through -- having to
22 take a physical before they come back to work.

23 I gave recognition to that and I said, we can work
24 something out on it.

25 Q I see.

CSA Reporting

1 Was anything else said about the non-discrimination
2 clause?

3 A Well, they wanted to remove the age question, as in
4 the previous discussions.

5 Q What was your position?

6 A The same as in the past, you know.

7 We felt it should be included. They felt it should
8 be taken out.

9 Q Were any other clauses discussed?

10 A 16, as I referred to before, they did make the im-
11 provements, the three for eight --

12 MR. KAUFMAN: Is that Section 16?

13 THE WITNESS: 16.

14 MR. EISENBERG: He already testified to that.

15 Q (By Mr. Eisenberg) Anything else, other than what
16 you testified to, discussed?

17 A Two other parts of it, one part on the -- our contract
18 provides for one part in the Section 16 where an employee
19 gets ten percent extra when he goes on vacation in his
20 wages, recognizing that most people spend more money on
21 their vacation than their wages here -- they receive.

22 Here in this company a number of employees hadn't
23 gotten any increases and it wasn't recognized in their
24 vacation pay for a number of years, as well as low pay of
25 most of the employees -- all of the employees, it certainly

CSA Reporting

1 would be of aid to the employees when they took a vacation
2 but the company objected to it and wouldn't go along with
3 it.

4 On Section 18 the company proposed, in light of the
5 power of the safety committee to stop an operation, they
6 proposed an accelerated arbitration if the committee --

7 Q What was the proposal?

8 Can you tell me what was said?

9 A The proposal in the contract provides for a safety
10 committee and if any part of the safety committee felt
11 an operation was unsafe, they had a right to stop it. The
12 employees would lose pay.

13 Q What did Mr. Tolmach say?

14 A He didn't want the power to be resided in any employee
15 and, therefore, we felt that was necessary because of a
16 safety condition and it was a serious matter, and the
17 worker is willing to give up their pay if they didn't --
18 in order to give themselves some sense of security.

19 The company as a counterproposal gave us an accelerated
20 arbitration, if we would agree to that, and drop our pro-
21 posal of stopping the operation. We said --

22 Q What was your response?

23 A We said we would go along with that.

24 Q Did you ask for any concessions on that --

25 MR. KAUFMAN: Objection.

CSA Reporting

1 Q (Continuing) -- in relation to that?

2 A No, I didn't. I --

3 MR. KAUFMAN: Objection.

4 JUDGE WEIL: Overruled.

5 Q (By Mr. Eisenberg) Any other provisions of the con-
6 tract discussed -- of the contract?

7 A We made a change in the Section 23, savings clause,
8 he requested a word to be added, solely.

9 I didn't object to it.

10 Q Can you be more specific?

11 A I have to read the language.

12 I didn't find it too meaningful.

13 MR. KAUFMAN: What section is this?

14 Q Tell us what was said?

15 THE WITNESS: Section 23.

16 A I have to look at the first draft that I received
17 from the company because I wrote it in there.

18 I don't have it in this.

19 Q You don't recall?

20 A I can look. I know -- I can look.

21 I think it came after the word agreement, provisions
22 of the agreement, the fourth line from the provisions, sole-
23 ly for the purpose of making them conform to such government-
24 al -- I think that's where we added it in there, that was
25 the company proposal and we put it in there.

CSA Reporting

1 Q Do you recall if anything else was discussed at this
2 meeting?

3 A We raised again the question of information that we
4 had not gotten.

5 Q What exactly did you say?

6 A We asked for the information on classifications, the --
7 and the job operation of the employees.

8 We asked for a copy of welfare and pension -- welfare
9 material. We asked --

10 Q What material did you ask for?

11 A The Blue Cross and Blue Shield, we had not gotten a
12 copy of the program that the company has in its welfare,
13 and the -- Dave says, Jesus, your're supposed to have
14 gotten that already, I'll look into it.

15 We always asked for the pension costs.

16 Q What was the response?

17 A And again, you know, you should have gotten it. I
18 will look into it. It should be on the way.

19 Remarks along that line.

20 Q Did you have any response?

21 A My only response was that we are -- we have been
22 promised it right along, I can't force you to give it to
23 me, but I have been asking for you -- I have been asking
24 you for it, why don't you two get together because up until
25 now it's still the same story, I still have not gotten it.

CSA Reporting

1 Q Did the company make any economic offer at this
2 meeting?

3 A No, just the -- if you want to consider the three
4 weeks in eight years on the vacation an economic offer.

5 Q Anything specific with respect to wages?

6 Did they offer any kind of wage proposal at this
7 meeting?

8 A No, I don't see anything.

9 My notes don't recollect anything.

10 No, no, no change in holidays, no change in that.

11 Q Do you recall if any other clauses of the contract
12 were discussed?

13 A Section 20, we got nowhere on this, subcontracting.

14 The company took a flat no position on subcontracting
15 and --

16 Q What did Mr. Tolmach say?

17 A That they were -- under no condition would they agree
18 to a subcontracting clause.

19 They wanted the right to freely subcontract and our
20 position was that we would want to -- no matter what kind
21 of contract we got, we would want to protect the rights
22 of people and put some sort of limitation without infringing
23 on the company's efficiency.

24 On the question of the three years of retaining of
25 records, again it was a matter of both sides checking out

CSA Reporting

1 what the law was because this may have been an academic
2 question between the two sides and that's all the discussion
3 that took place on that, and that's about it, I believe,
4 for that meeting.

5 We did discuss 19 and it was agreed that 19 provided
6 for no bonuses but it would not hamper the company in giving
7 out bonuses, as long as they're not related to production.

8 Q Do you recall how this meeting ended?

9 A I think Dave had problems.

10 Q What did he say?

11 A I am coming to that.

12 Dave had problems in terms of either he had a head-
13 ache or stomach problem and wanted the meeting to end up --
14 end, it had gone on for about a couple of hours, and on
15 that basis we broke up the meeting.

16 Q Did you respond to Mr. Tolmach's problem?

17 A My only response -- we discussed his problem, I was
18 sympathetic as I could be, I still at the same time had
19 the responsibility of trying to --

20 Q What did you say?

21 A I will come to it.

22 Q Thank you.

23 A To the people in the shop and I was meeting with them
24 periodically and in touch with some of the people, they
25 were concerned about what was happening and I couldn't show

CSA Reporting

1 any progress to any great degree, that negotiations were
2 going slow.

3 I did want to be able to get some meaningful offer
4 from the company that we could usually arrive at an agree-
5 ment we could say that the men could accept and that would
6 benefit them, and each meeting ended up with very little
7 improvement --

8 Q What about this meeting?

9 A This meeting. I am saying what I said to the company.

10 Q Right.

11 A I said to the company, each meeting ends up with very
12 little progress, despite the fact we're discussing -- really,
13 we should have some concern for the employees who are wait-
14 ing a long time and we ought to work out a means of coming
15 up with some offer to get to the heart of the contract.

16 They said they would try.

17 I said, get us the information so we can be in a
18 position to bargain in a way that will meet any offer you
19 make.

20 He said, we'll try. We will see that the insurance
21 agent or Bruce will be talked to in terms of the informa-
22 tion we needed.

23 That's it.

24 Q Was anything about a new meeting discussed?

25 A Yes. We nailed down a meeting I am pretty sure.

CSA Reporting

1 Q Do you know what date you scheduled?

2 A We had a meeting scheduled for the 12th.

3 Q Do you recall if you discussed when that meeting
4 would begin?

5 A Well, all our meetings, with the exception of one
6 meeting, started in the afternoon.

7 I will be repeating myself if I said the same thing.

8 The meetings were in the afternoon because the company
9 couldn't meet in the morning -- when I say the company,
10 either the company attorney or Gitlin, mostly because of
11 the attorney.

12 Q Do you remember how you actually got around to agree-
13 ing on the date of November 12th for the next meeting?

14 A The company would look at their schedule when their
15 next date -- it was on the basis what their next open date
16 was.

17 I would meet almost any open date they had.

18 It was rarely I couldn't meet a date during the course
19 of twenty meetings. That was the only date they could make
20 it because of their heavy schedule and I had no choice but
21 to agree on a date.

22 MR. KAUFMAN: Objection as to the witness'
23 state of mind, unless he made these statements at
24 the --

25 THE WITNESS: I made these statements.

CSA Reporting

1 MR. KAUFMAN: (Continuing) -- at the meetings.

2 MR. TOLMACH: Come on.

3 THE WITNESS: We don't need that.

4 JUDGE WEIL: Well, the witness said he made
5 these statements.

6 Q (By Mr. Eisenberg) Did the next meeting take place
7 as scheduled?

8 A Yes, it did.

9 Q How long was it?

10 A A couple of hours.

11 Q Do you remember what time of day it ended?

12 A No, I don't exactly, but it would be always around
13 the same time.

14 We get started 2:30, sometimes 3:30 meetings, and
15 we wind up around 5:30, 5:00 o'clock.

16 Q Do you know who was present?

17 A If I look at my notes, yes.

18 Q Will you?

19 A All four of us were present, Bruce, Dave, Schifano
20 and myself.

21 Q Can you tell me what transpired at this meeting from
22 start to finish?

23 A If I can look at my notes.

24 MR. EISENBERG: Do you want to see them?

25 MR. KAUFMAN: Yes.

CSA Reporting

1 (The witness handed a document to Mr. Kaufman.)

2 MR. KAUFMAN: Thank you. (Mr. Kaufman handed
3 a document to the witness.)

4 Your Honor, may I inquire whether or not this
5 witness is going to be testifying from his notes
6 because of the dates and his inability to recollect
7 what happened at the meetings because of what was on
8 the note and that the notes which will give him that
9 recollection and that he's just reading from the
10 notes?

11 My point is, Your Honor, if the witness is
12 just reading from notes, maybe we might expedite this
13 by putting the notes into evidence.

14 THE WITNESS: I am not reading from the notes.

15 JUDGE WEIL: I have seen his notes, Counselor.
16 That couple of hundred pages we have got from this
17 witness are not embodied in those two pages of notes
18 that he's read so far.

19 Q (By Mr. Eisenberg) Mr. Colavito, I ask you if you
20 can tell us what transpired at this meeting?

21 A The company made a modification on its Blue Cross
22 and Blue Shield program.

23 They had previously a program where an employee would
24 come under it and be eligible for Blue Cross and Blue Shield
25 after seven years of employment by the company.

CSA Reporting

1 They were going to modify it to one year -- after
2 one year of employment and they made that proposal.

3 Q What after one year of employment?

4 A Blue Cross and Blue Shield.

5 Q To who -- to who?

6 A To employees.

7 Q I see.

8 A I thought I had made it clear that previously the
9 employees would be entitled to a Blue Cross and Blue Shield
10 program after seven years of employment with the company.

11 They were modifying it now to eligibility to this
12 program after one year of employment.

13 Q What was your response?

14 A Our response was we were glad to see an improvement.
15 We didn't think under today's medical cost, which can wipe
16 out even people with great coverage, that it would be
17 sufficient to enjoy necessary protection in today's situa-
18 tion as the program that we had in the welfare program,
19 which gave employees protection after three months of con-
20 tributions by the company to vast numbers of -- vast array
21 of benefits, life insurance, medical, hospitalization,
22 drug, dental, and so forth, and that we certainly wanted --
23 one area we wanted to make improvement was this medical
24 area and some security given to the man and his family, and
25 they told us it would cost them some seven cents more, so --

CSA Reporting

1 this improvement and, therefore, they were making a great
2 improvement here.

3 Q Well --

4 A They gave us the cost on their vacation too.

5 They said the additional improvement on vacation
6 would cost four cents. However, they would want a re-
7 striction on the third week of vacation, that if the com-
8 pany's production schedule would not allow the third week,
9 if the man couldn't be accommodated before December, they
10 would give the man his pay by December 1st, the third week's
11 vacation.

12 Q What was the vacation offer?

13 A It was a three weeks vacation for eight years, and
14 that was going to cost four cents to the company, additional
15 cost of four cents.

16 Again they tied it in with a -- the man may not be
17 allowed to take it, unless the company's production schedule
18 permitted it and, however, if he didn't take it because of
19 the company's schedule, they would get the money by Decem-
20 ber, by December 1st, they would pay them out the equivalent
21 of a third week's pay.

22 I said, we should be able to work out the question
23 of the, you know, company's needs, we should be able to
24 work that part out, you know. We'd have that problem
25 whether it was the vacation problem or not and we can

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1 address ourselves to that and it could be worked out.

2 However, as far as the vacation program, again we
3 pointed out it wasn't -- basically only a couple of guys,
4 I think, during the course of the three year contract
5 would get the benefit of them because the lead men have
6 already.

7 Q Excuse me?

8 A The lead men already had the third week of vacation.

9 It would only be effecting a couple of guys the
10 length of the contract, additional men, so it wasn't really
11 any kind of basic improvement as far as I can see, going
12 back from '71 to a length of a three year contract, or
13 whatever it may be.

14 So we voiced our objection on that.

15 They offered a twenty-five cent wage increase and
16 this -- in this session.

17 Q Well, was there any discussion about this?

18 A Our reaction was that in light of -- and this was in
19 '74 already and the period everybody talked about double
20 digit inflation then and there, in light of the fact the
21 men had not received any decent increase or had wage rates
22 that reflected their skills, that it was totally inadequate
23 and we pressed the company again for the information on the
24 classifications so we could make an offer that would deal
25 with a classification system and the numbers and the possible

CSA Reporting

1 preventing of inequities under any proposals made.

2 Q When you said you pressed the company, what did you
3 say?

4 A We said, where is the information we are supposed to
5 get.

6 Q What information?

7 A They said, well, you know, we are working on it. We
8 will get it for you. We will get it for you, and they never
9 said they never were going to give it to us, they said, we
10 don't have a classification system.

11 I said, I am not interested in whether you have it
12 or not, I am interested in whether you perform what they
13 do.

14 I said, we talked about this before, give us an idea
15 of what they do and frame a classification and slot each
16 guy in his right classification.

17 Q What else was discussed?

18 A After that we went back to the beginning of the con-
19 tract and we reiterated again the arguments we used on
20 the -- both on preamble.

21 On bargaining they said they won't budge on the
22 bargaining unit, Section 1, that's their position and
23 they're not going to budge any more on it.

24 Q When you say preamble, what did you have reference
25 to?

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1 A The successor and assigns clause, and so forth.

2 On 2 again they reiterated it's unfair to give such
3 power to the international, and that deals with the ques-
4 tion of people not being -- the work of the bargaining
5 unit will be confined to the fabricating process and
6 not to the job site.

7 On the recognition agreement section they -- on plant
8 clericals, we agreed that it would be okay to drop out
9 plant clericals in our proposal and basically what remained
10 almost -- was their proposal on Section 3 was almost iden-
11 tical, once we dropped that out, so it really hinged on
12 Section 1.

13 Section 4, there was again a change on the part of
14 the company.

15 MR. KAUFMAN: Section what?

16 THE WITNESS: 4, union security.

17 A The company said that it wanted the right to decide
18 whether the men should join the union or not, and if the
19 union made a concession, they may concede to it.

20 Q Concede to what?

21 A Section 4, union security.

22 Q As you proposed?

23 A Yes.

24 Q I see.

25 A They didn't suggest what --

CSA Reporting

1 MR. KAUFMAN: Can you please repeat the last
2 answer?

3 (Whereupon, the above referred to answer was
4 read by the reporter.)

5 A Section 5 --

6 Q Did you make any response?

7 A I asked them what they had in mind. They said, give
8 something, and I said, okay, in the course of negotiations
9 has been -- there has been concessions already, we'll be
10 able to make some other concessions, but again I said, I
11 don't understand why the company is getting involved in
12 this.

13 The men came to us, we organized the shop, we didn't
14 organize the shop on the basis of coming around to the shop,
15 they came to us, practically the whole shop came to us, we
16 signed the men up. We have a whole history here of, you
17 know, where the company violated the law in terms of the
18 men's rights, the whole background, aside from the fact the
19 company had already originally agreed to the initial negotia-
20 tions at the second meeting to agree to union security,
21 it seemed kind of strange that the company was getting in-
22 volved in what the rights of men were and speaking for the
23 men, first of all, deciding what they should -- should have
24 a right to join or not to join, as well as leaving it up
25 to the men when the men really came to us in the first place.

CSA Reporting

1 Section 5, on the check off --

2 MR. KAUFMAN: Your Honor, can the record reflect
3 that the witness is reading from the notes and then
4 I would assume adding to them after he refreshes his
5 recollection on each of the points that he's testify-
6 ing to now?

7 JUDGE WEIL: Yes, it can reflect that.

8 I think I suggested it to him.

9 A On Section 5, the check off -- Section 8, they agreed
10 to as okay. However, they made a change, they wanted --

11 Q Excuse me, I didn't understand your first sentence.

12 A On Section A of subsection A of Section 5 they said
13 A is okay.

14 Q That's your proposal?

15 A Yes. They wanted -- however, there is a -- language
16 that deals with, I think, money collected from the men should
17 be turned into the union by the 10th day of the month.

18 They wanted more time. They wanted until the 15th
19 day of the month.

20 You know, I don't recollect if I argued. I must have
21 said something. Everybody else got the ten days, you are
22 a smaller firm, I am sure you do mostly hand bookkeeping,
23 you don't send it out and these people do both, both --
24 have hand bookkeeping, as well as a computer set up, and
25 everybody seems to be maintaining it and we have records to

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1 maintain too to get out with our international, it would
2 be some kind of hardship to us, but I didn't voice a great
3 objection to it.

4 I was curious just about why this should be a problem
5 for a company this size.

6 Q Did you indicate to them that you would agree to it?

7 A I don't recollect at this point.

8 I may show it within the original draft where I okayed
9 it, and so forth, but I did raise curiosity why there should
10 be a problem with this company.

11 Q Do you now remember whether you agreed to it or not?

12 A No, I don't -- it doesn't show. I can't think.

13 Q What else was discussed?

14 A There was some language that the company wanted in
15 the -- in the -- some language to be omitted, which I made
16 note of it

17 My notes don't reflect whether I agreed to them or
18 not, but they do show the company made some request to
19 change language here again, two or three different -- two
20 places in the -- in the section.

21 Q What section are you referring to?

22 A Section 5, the check off, and I don't think I agreed
23 to it because probably it was the first time it came to me.

24 Now, in Section 6 the company doesn't want to change
25 the position, and that deals mainly with the question of

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1 changing of starting and quitting time.

2 Again, you know, it was the same arguments on both
3 sides, you know, the people -- people were all over the
4 place and for various guys who live out in Shirley, Long
5 Island, if they had to meet the traffic going out to that
6 area, it may be a problem, I wasn't sure, but certainly
7 they should have some input into a changed starting and
8 quitting time.

9 Q Was anything else discussed?

10 A I believe that's all at this meeting, except the
11 setting up of another meeting and again it was a meeting
12 that was scheduled --

13 Q I don't believe I asked the question.

14 A Well, okay. You said, was anything else discussed.

15 Q Mr. Colavito, do you recall how this meeting ended,
16 under what circumstances?

17 A At a point the parties on management's side felt
18 that was enough for the day and it broke up on that basis.

19 I mean, it's repetitive for me to go into it all the
20 time. It's a repetitive situation.

21 Q Please, if you remember what was said, tell us.

22 A Well, you know, it was getting late, I have to beat
23 this traffic out of here and let's schedule another meeting.

24 Q Was another meeting scheduled?

25 A Yes, there was.

CSA Reporting

1 Q Can you tell us what you said and what representatives
2 of Milgo said?

3 A The routine was the company attorney would look at
4 his book and see what date he had open and the first open
5 date, well, this is the day I can make it, I can't make
6 this, and this was the earliest. If anything, I would try
7 to bring them back to an earlier date.

8 Q Mr. Colavito, do you remember what was said?

9 A Well, that's all I can remember.

10 Q With respect to setting up another date, was a date
11 agreed to on this meeting?

12 A Yes.

13 Q What date was that?

14 A The 22nd, I believe.

15 Q Was there a starting time for the next meeting?

16 A The same time. It would be the same time.

17 Q Did the next meeting occur as scheduled?

18 A The 22nd, yes.

19 Q What time did it start?

20 A In the afternoon.

21 I don't know what time exactly. It would be around

22 2:30, I guess.

23 Q How long did it last?

24 A A couple of hours at most.

25 Q Do you recall who was present at this meeting?

CSA Reporting

A I don't have any notes, no, I don't.

It would be at least Tolmach and myself.

Q Can you tell me what occurred at the meeting, what was discussed and what the participants in the meeting said from start to finish?

A I gave him language that dealt with the -- removing the language which existed in terms of the hours, but we talked about a seven and a half hour day, which is really an eight hour day, and I gave him -- gave him proposals on the language which would cover that situation, so the company could be assured it was an eight hour day and the language would reflect that.

So I made that change to the company, they took notes on that.

That's about all on 6.

Q What was your concession?

Can you give me the details?

A Well, I could turn it back. The first three paragraphs were developed in a way -- the contract proposal covers a seven and a half hour basic work day and a six and a half hour work, basic work day, for the second and third shifts and the numbers would change so that they would reflect an eight hour day for the first shift and a seven hour day for the second shift.

Q I see.

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1 A Even though the proposed contract talks about main-
2 taining a regular first shift of forty hours and a regular
3 second and third shift of seven hours, it was language that
4 was gained in the past and incorporated in the contract
5 as a means of going further into a shorter work day in
6 the contract.

7 Q Was anything else discussed by either Mr. Tolmach or
8 yourself concerning these hours of work?

9 A No, just our proposal and the -- we had left off last
10 time on the mutual -- change in the -- by mutual agreement
11 the starting and ending of the shift.

12 Q Well, what was said? Tell me what was said?

13 A We didn't discuss that at the meeting because there
14 was no change on the part of the company's position.

15 They took a flat position, they weren't going to budge
16 on that mutual agreement, and that's all.

17 We had enough discussion on it. We are not going to
18 budge from the change in shift, even though we made a con-
19 cession in the change of language, which we had agreed to
20 earlier. We made that with apprehension.

21 Q What else was discussed at the meeting?

22 A And the conformity -- we dropped the first paragraph
23 of A on Section 7, which sort of supplemented the seven
24 and a half hour day, made it an eight hour day, it's
25 technical but we dropped it in order to conform with the

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1 change we made in Section 6.

2 The company at this meeting agreed to offer double
3 time for Sunday, as contrasted to its past position.

4 Only time and a half after eight hours, however, and
5 they would agree to Section 8 except they didn't want the
6 steward to have a -- be assigned to overtime work if any-
7 body worked overtime -- in other words, they would agree
8 to H, which dealt with the question of no discrimination
9 in the assignment of overtime and that to be sharing of
10 overtime between the employees, that they agreed to, but
11 they would not agree to the last part of the section, which
12 dealt with the stewards should be one of the employees to
13 be assigned to overtime work when there was overtime per-
14 formed.

15 Q Did you have any response?

16 A Sure.

17 Again the same thing, the steward should be on the
18 job when employees are working.

19 We have a long history with this company but even in
20 this or any company, it's a principal we follow, we like to
21 have a steward present as a representative of the men on
22 the job and if any problem comes in, there's a guy there
23 to help take care of it. So much for 7.

24 The company agreed that -- to the concept, it wasn't
25 in there, their proposal, it was in ours, they agreed to the

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1 concept for paying for the holiday whenever it falls.

2 MR. KAUFMAN: What?

3 Q Can you be more specific?

4 I don't understand you. What are you referring to?

5 A Referring to a man who is eligible -- gets paid for
6 the holiday, sometimes you have a -- all kinds of conditions
7 set up for it.

8 They agreed if it falls on Sunday, they get paid on
9 Monday. If it falls on Saturday, you get paid for the
10 holiday.

11 They agreed wherever a holiday falls, the holidays
12 we agreed to, the man would get eight hours pay for it.

13 I mean, that concept was agreed to by the company.

14 Q Was anything else said about holidays?

15 A I believe they wouldn't agree to a holiday if it --
16 we have provisions in the contract if a man gets laid off,
17 fifteen business -- before a holiday or if a man gets sick
18 some sixty days before a holiday, he gets the holiday paid.

19 They wouldn't agree to that concept and we -- they
20 said if a man is present -- our position was, and still is,
21 a man had to work the day before and day after to meet that
22 standard, didn't get a holiday's pay.

23 Our position was that none of the agreements that we
24 had under the contract with employers had it.

25 The usual argument that it gets abused if it wasn't

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1 there, we didn't find that in practice.

2 Q Can you tell us what was said, please, Mr. Colavito?

3 A That's just what I am saying.

4 Q Well, try to tell us what was said and not summariz-
5 ing --

6 A That's what I am saying.

7 Q (Continuing) -- if you remember.

8 A I am just saying what I said. Now, I don't know --
9 maybe the phrasing is unusual, but that's what I said,
10 that we have other contracts, other people under contract,
11 there's a hundred sixty companies under contract, they
12 all receive -- they all have a clause where they get the
13 holiday as long as they work in the work week. They didn't
14 have to meet the standard of the company, the day before
15 and day after, and that when a man got sick, regular em-
16 ployee, he didn't lose a holiday because he was sick, he
17 fell within the guidelines, sixty or whatever the days were.
18 If a man got laid off, man got his holiday.

19 It was a discouragement to the company to lay off
20 people by having some sort of limitation to get his holiday.

21 They wouldn't agree to those -- those concepts.

22 The only concept they maintained was they had to work
23 the day before and the day after.

24 I guess that's about all under Section 8.

25 Section 9, the company agreed to practically -- 9A,

CSA Reporting

1 the company had agreed to 9A and part of 9B, that was on
2 reporting pay, and I think that's where we may have ended
3 this meeting.

4 We went through Section 10.

5 The company changed its position in relation to the
6 Federal Mediation Service, they would agree now, if we had
7 to go to arbitration, to use the A.A.A.

8 That was the one change they made in their position.

9 Q What was your response?

10 A Well, we were glad that the company agreed to the
11 A.A.A. but, you know, we still had the rest of the section
12 open --

13 Q What were the problems, was that discussed -- were
14 there other problems discussed?

15 A We had the -- I'm not sure if they were discussed or
16 not.

17 This was the only modification made by the company
18 on their previous position and that was the Federal Media-
19 tion versus A.A.A.

20 My notes don't discuss if we discussed the other
21 problem.

22 We did end this meeting at this point, Bruce wanted
23 to have permission to give two of his employees an increase
24 in wages, he wanted to know if it was okay with us.

25 We asked who the employees were and the basis on

CSA Reporting

1 which he was making the increase.

2 He said they were developing in their skills, it was
3 a merit increase.

4 I asked him how much it was.

5 He said he was going to offer them a quarter increase,
6 and I said I would check it out and I would call him within
7 a few days.

8 So he said, okay, and Dave said that he wanted to
9 end the meeting at that point because he wanted to prepare
10 a new draft for us on the changes made and some other ideas
11 they had in mind and he would get back to us within two
12 weeks -- would have the changes mailed to us within two
13 weeks.

14 I tried to say can we nail down a meeting.

15 He said, I may be going on vacation. I have to call
16 so I can fit in my schedule with you.

17 So, he says, in two weeks you'll have my new draft,
18 and I'll call you in relation to a new date for meeting.

19 That's how the meeting ended.

20 Q As a result of the end of that meeting, did Mr.
21 Tolmach contact you?

22 A No, we had not received anything in the mail, not
23 received a telephone call, and so in about a week, week and
24 a half later we made some calls and --

25 Q A week, week and a half later from when?

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1 A From that last meeting. After that last meeting, and
2 we left messages, we got no calls --

3 Q Mr. Colavito, did you do anything about it, not hear-
4 ing?

5 A I made a number of calls.

6 Q Who did you call?

7 A I spoke to the -- his secretary I guess it was, be-
8 cause the switchboard put me on to his secretary.

9 Q What did you say to the secretary and what did the
10 secretary say?

11 A I said, I am supposed to get material from Dave, I
12 have not received it.

13 I was supposed to get a phone call from Dave in order
14 to set up another meeting. I have not received the phone
15 call or material. Tell Dave to call me.

16 Q Did the secretary make any response?

17 A And no -- no calls were made, and I called again.

18 Q Did the secretary at any time --

19 A She said, I will leave a message.

20 Q Did she say anything about what she would tell him
21 to do?

22 A She would carry the message.

23 MR. KAUFMAN: Objection.

24 The witness answered the question.

25 MR. EISENBERG: Withdrawn.

CSA Reporting

Q (By Mr. Eisenberg) Do you recall how many calls you made like this?

A I made at least three or four calls and I think as a result of not hearing from him, we -- we had the office send a letter to the company -- to the attorney, rather.

Q Did there come a time when Mr. Tolmach or the company communicated with you?

A Yes, the company finally called and they said that they were finalizing their draft and the material would go out, they were sorry, this is Dave --

Q Do you remember when this was?

A I think it was the beginning of January, I think, and that he was finalizing the draft and it was going out. I said, what about a date. He said again, I'll call you back in terms of a date, and he couldn't give me a date at that particular time.

Q Did you get any other communication in any form?

A We received a letter from the company in relation to apologizing that they were late in -- in -- in getting back to us.

Q Did anything come with that letter?

A I think that's the material -- the letter came with the material for the second draft of proposals.

MR. EISENBERG: Can you mark for identification as General Counsel's Exhibit -- off the record.

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JUDGE WEIL: Off the record.

(Discussion off the record.)

JUDGE WEIL: On the record.

MR. EISENBERG: As General Counsel's Exhibit 14 mark this document, and General Counsel's Exhibit 15 mark this document.

(The above referred to documents were marked General Counsel's Exhibits 14 and 15 for identification.)

Q (By Mr. Eisenberg) Mr. Colavito, I show you General Counsel's Exhibit 14 for identification.

Can you identify that record -- that letter? (Handling document to the witness.)

A Right. It's a letter we received from the company -- in response to the various calls we made and dealing with the matter of getting back to us in a couple of weeks and giving us drafts of new proposals or their position.

Q That's the letter they sent you?

A Yes.

MR. EISENBERG: I offer G.C. 14 in evidence.

JUDGE WEIL: Any objection?

MR. KAUFMAN: I have no objection.

JUDGE WEIL: Received.

(The above referred to documents, heretofore marked General Counsel's Exhibits

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No. 14, was received in evidence.)

1
2
3 Q (By Mr. Eisenberg) Mr. Colavito, I show you General
4 Counsel's Exhibit Number 15, which consists of documents,
5 and ask you if you can identify those? (Handing documents
6 to the witness.)

7 Can you identify that document, Mr. Colavito?

8 A Yes, I am just going through the pages to make sure --
9 the -- the bulk of this is the draft I received in the
10 second -- second draft.

11 Q Is it all of the draft you received?

12 A The bulk of it, I would say ninety-nine percent --
13 ninety percent would be.

14 Q Do you know which isn't that you received?

15 A The ones I marked with a Roman numeral would definitely
16 be the second draft.

17 There are a few sheets in here that don't have it on
18 it -- not many -- that don't have any number on it, but
19 basically I think the document is that.

20 Q Mr. Colavito, did you receive this entire thing with
21 the letter dated January 7th and, if not, which ones didn't
22 you receive, and I'll amend my offer accordingly?

23 A I'm sure all the ones that are marked with a Roman
24 numeral on top were received.

25 They were not stapled together. None of these were

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1 stapled.

2 One or two in there don't have a number on them
3 maybe because they don't belong to a section that con-
4 formed with our contract and that might be the reason for
5 it, but the bulk of it is really what I received from
6 the company.

7 MR. EISENBERG: Can we go off the record for
8 a minute, Your Honor?

9 JUDGE WEIL: Yes, we can go off the record.

10 (Discussion off the record.)

11 JUDGE WEIL: On the record.

12 MR. EISENBERG: It's my understanding that
13 the parties have agreed to stipulate that General
14 Counsel's Exhibit 15 was the documents received by
15 Mr. Colavito, together with the January 7th -- the
16 letter dated January 7th and referred to therein and
17 accordingly, I offer it into evidence at this time.

18 MR. KAUFMAN: So stipulated.

19 JUDGE WEIL: Any objection to the receipt?

20 MR. KAUFMAN: No objection.

21 JUDGE WEIL: They're received.

22 (The above referred to docu-
23 ment, heretofore marked
24 General Counsel's Exhibit No.
25 15, was received in evidence.)

MR. EISENBERG: I may be getting into a new

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1 area, I am shortly approaching a new meeting.

2 JUDGE WEIL: We are going to break before you
3 get to that meeting.

4 MR. EISENBERG: Excuse me?

5 JUDGE WEIL: We will quit before you get to
6 that meeting.

7 We will resume tomorrow morning at 9:00.

8 (Whereupon, the hearing was adjourned at 5:17
9 o'clock p.m.)
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CSA Reporting

BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th Region

In the Matter of:

MILGO INDUSTRIAL, INC.,

and

SHOPMEN'S LOCAL UNION NO. 455, INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS, AFL-CIOCase No.
29-CA-461216 Court Street,
Brooklyn, New York
Tuesday, March 30, 1976The above-entitled matter came on for further
hearing, pursuant to adjournment, at 9:10 o'clock, a.m.

BEFORE:

PAUL E. WEIL, Administrative Law Judge

APPEARANCES:

JACK D. EISENBERG, Esq. Brooklyn, New York,
appearing on behalf of
the Counsel for the
General Counsel.ARTHUR R. KAUFMAN, Esq. Law firm of Jackson, Lewis,
DAVID M. TOLMACH, Esq. Schnitzler & Krupman,
261 Madison Avenue, New York,
New York 10016, appearing on
behalf of the Respondent.

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I N D E X

276

WITNESSES:

DIRECT

CROSS

William Colavito

277

363a

EXHIBITS:

FOR IDENTIFICATION

IN EVIDENCE

General Counsel's:

16

286

287

17

296

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334

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362

Respondent's:

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P R O C E E D I N G S

JUDGE WEIL: On the record.

Whereupon,

WILLIAM COLAVITO

was called as a witness and, having been previously sworn,
was examined and testified further as follows:

CONTINUED DIRECT EXAMINATION

Q (By Mr. Eisenberg) Mr. Colavito, after you
received the letter dated January 7th which is in evidence,
and the contract proposals which are in evidence, what
did you do?

A I looked it over and after I had a chance to look
them over I called the company for a meeting, called
the attorney.

Q When did you call?

A Within a few days to a week.

Q From when?

A From January when we received the communication,
January 7th communication.

Q Who did you call?

A The lawyer, the attorney's office.

Q Who did you speak to?

A The girl, secretary that mans the switchboard,
sometimes the secretary, and --

Q What did you say?

1 A I left --

2 Q What did you say to the secretary and what did
3 she say to you?

4 A I left messages and I finally got a call. I
5 think I called the 29th, I called and they said he would
6 be back in a couple of days from out of town, and I
7 spoke to Dave Tolmach on Friday or Monday.

8 Q Of what date, do you remember?

9 A Of January, after the 29th when I called. When
10 they told me this information and I spoke to him.

11 I said I wanted a meeting, been trying to get a
12 meeting and I said I had not received any economic offer,
13 and he said he would look into it and get back to me on
14 the question of a meeting as well as the economic offer.

15 I received a letter from the company. One of the
16 problems of setting up a meeting was Bruce was out of
17 town and they were trying to work out a meeting and
18 look into the economic package, and we received an
19 economic breakdown in the mail and I think a proposal
20 for a meeting.

21 Q Mr. Colavito, I show you General Counsel's Exhibit
22 No. 7, letter dated February 3, 1975.

23 Is that the letter you were referring to concerning
24 the economic offer?

25 A Yes, yes.

1 Q I note that that letter has a proposed meeting
2 date of February 14th.

3 MR. KAUFMAN: I object to the question. The letter
4 is in evidence and clearly that letter does not have
5 proposed meeting date, your Honor and the way that
6 question is framed to the witness is a misleading question.

7 It is a confirmation of a meeting date.

8 Q After receiving that letter how was the meeting
9 arranged?

10 MR. KAUFMAN: Objection. The letter is in evidence
11 and speaks for itself.

12 The witness first should be asked whether or not
13 there was a meeting date.

14 JUDGE WEIL: Ask the witness whether there was a
15 meeting date.

16 Q Was there a meeting date on February the 14th?

17 A Yes, the date --

18 Q Did the meeting actually occur on February 14th?

19 A No, it was called off.

20 Q Can you tell us what happened concerning the
21 next --

22 A We received a phone call in the office, I think
23 around the 11th that the meeting of the 14th been called
24 off, the company couldn't make it and he proposed either
25 the 18th, 19th or 28th.

1 I couldn't make the 18th or 19th because of
2 some trust meetings and an Albany meeting I had so I
3 confirmed the 28th.

4 Q Did you do this yourself?

5 A No, the office did it for me.

6 Q Did a meeting occur on the 28th?

7 A No, that was postponed to the 3rd.

8 Q Why was that postponed?

9 A The company couldn't make it and it was postponed
10 to I think a few days, to the 3rd, that is all.

11 Q How do you know the company couldn't make it?

12 A A phone call was made to the union.

13 Q Who received that phone call?

14 A The office or the secretary in the office, either one.

15 Q How did you find out about it?

16 A The office tells me about it.

17 MR. KAUFMAN: I object to that answer and ask that it
18 be stricken on the grounds of hearsay testimony.

19 JUDGE WEIL: It won't be stricken.

20 Q When did the next meeting occur?

21 A March 3rd.

22 Q Where did it take place?

23 A In the same place, the attorney's office.

24 Q When did the meeting start?

25 A 10 o'clock in the morning.

1 Q How long was the meeting?

2 A I guess it went past the lunch hour.

3 Q Well, approximately how long was it altogether?

4 A Three or four hours.

5 Q Who was present at that meeting?

6 A Myself and Dave. Bruce Gitlin was not there, I'm
7 not sure if Tony was there. I have to check my notes.
8 It is possible that they show something.

9 MR. KAUFMAN: Your Honor, before the witness checks
10 his notes I would ask the general counsel find out from
11 the witness as much as he knows about the meeting and
12 what happened, and then have the witness check his notes
13 as to details that might have been omitted.

14 JUDGE WEIL: I notice that the notes are brief and
15 the notes of the whole meeting are on one page. I have
16 no objection to that.

17 Q Can you remember anyone that was present at the
18 meeting?

19 A Dave and myself were present at all meetings.

20 Q Can you tell us what transpired at this meeting?
21 as to what was said and what was discussed by each of
22 the parties from the beginning of the meeting to the
23 end of the meeting as best you can recollect?

24 A I do know that we discussed wages considerably,
25 extensively, I should say.

1 We went into detail what had transpired in
2 the period since the men came to us to be organized.

3 Q Can you tell us what was said?

4 A I pointed out that in a year alone there was almost
5 a 15 percent in '74 cost of living increase and the men
6 had received very minimum kinds of increases.

7 Their rates of pay were very low for the kind of
8 work they did.

9 David was unsympathetic in terms of what the impact
10 of the cost of living.

11 He did, you know, quibble about whether it was 12
12 percent of 15 percent in terms of increase in the cost of
13 living.

14 I pointed out what was the average increase in the
15 wage increases coming across at that time.

16 I also pointed out, I believe, that some of those
17 workers did not receive any increase at all for four
18 years, according to the company's records, and they
19 lost not only their wages but they lost in their
20 vacations and holidays and even in their pension benefits
21 according to their pension setup.

22 Q What did you say about that?

23 A I said according to the pension trust indenture
24 they got some benefits based on the salaries they are
25 making.

1 In the wage increase, it was not coming through
2 for them, it wouldn't be reflected in their pension
3 eventually and, of course, it was true also in their
4 vacations or holidays and so forth.

5 Q Did any company representative that was there
6 respond to that?

7 A I said there was general sympathy on his part in
8 terms of the cost of living but he said "Look, I'm bound
9 by my position of my clients. I have to support that
10 position."

11 The wage rates were low. We went over wage rates
12 for the kind of skills performed by these men in the shop,
13 in the metropolitan area and we had shops under contract
14 that performed the same kind of work.

15 I think we did discuss bargaining units. I think
16 we tried to make some modifications on it. I don't
17 remember exactly if I had done in detail this meeting
18 or not.

19 I may have touched on some of the clauses that
20 I felt the company in their second draft had shifted
21 or moved backward on.

22 Q What did you say?

23 A Well, I would indicate which ones they were if I
24 felt the company had moved backwards on the second draft
25 which I got January 7th.

1 Q What did you say?

2 A I said in this position we had agreed --

3 Q Can you be more specific?

4 A Well, I don't know which sections. Probably Section
5 13 was one of the biggest ones in which there was a
6 movement backwards.

7 MR. KAUFMAN: What is Section 13?

8 THE WITNESS: Seniority.

9 A (Continuing) There was a number of --

10 Q Do you remember what you said?

11 A We had agreed to some modification. I know we
12 made in '74 and I think they were as a result of those
13 modifications the company had agreed to a number of
14 subsections of seniority.

15 What they were I probably would have to refer to my
16 notes if there is any reflection here, or in perhaps
17 the original draft, I may have marked them in the
18 original draft.

19 I raised questions about information I wanted.
20 Still had not come forward to us, the information about
21 job classifications and tasks, the sick leave practice,
22 the pension costs and a copy of the welfare, you know,
23 program the company had.

24 Q Did you get any of that information at this meeting?

25 A No, I did not.

1 I also -- I think I did ask -- there was
2 something else I asked for. I may have asked for
3 bonus payments. I had not received that and I may have
4 asked for that too, the payments to the workers of what
5 they were.

6 Q When you asked for these items what was the
7 company's response?

8 A Always, this was no different, "Gee, I will look
9 into it, I will see that we get them for you."

10 The company never said we shouldn't have any other
11 material. They never denied it to us, denied that we
12 had the right to it, but I never received that information.

13 Q Do you recall anything else that was discussed?

14 A No, I just can't.

15 Q Mr. Colavito, you mentioned in what you characterize
16 as the original proposals you took certain notes.

17 A Yes.

18 Q What are on there.

19 When did you take those notes?

20 A During the course of negotiations. I may have
21 marked a modification or a proposal by either side on
22 them and I may have marked an agreement on them as
23 well as within the original contract proposal we gave
24 them.

25 So a number of different documents may reflect some

1 of the notes of what transpired at the meetings.

2 Q Would referring to those notes refresh your
3 recollection?

4 A Well, in any particular meeting I would know if
5 it was done at a particular meeting or not. If it was
6 not incorporated in any notes it might be incorporated
7 in the contract itself.

8 Q You don't remember anything else that was discussed
9 at this meeting?

10 A I think he gave me a copy of what they considered
11 a union security clause at this meeting, I think.

12 This was the meeting of March the 3rd.

13 MR. EISENBERG: I ask that this document be marked
14 as General Counsel's Exhibit 16 for identification.

15 (Document above described marked
16 General Counsel's Exhibit 16
for identification, of this date)

17 Q Mr. Colavito, I show you General Counsel's No. 16
18 for identification.

19 Can you identify that document?

20 A This is the company's proposal on so-called union
21 security.

22 Q When did you receive that?

23 A I believe it was in March, the March meeting.

24 Q Who gave it to you?

25 A Dave.

1 MR. EISENBERG: I offer it in evidence.

2 MR. KAUFMAN: No objection.

3 JUDGE WEIL: It is received.

4 (General Counsel's Exhibit 16
5 for identification received
in evidence, of this date)

6 Q Mr. Colavito, do you remember anything else that
7 was discussed at this meeting?

8 A No, I just can't.

9 Q Would you gain, as you said, refer to your notes?
10 Maybe that will refresh your recollection.

11 MR. KAUFMAN: Before the witness answers any questions
12 could I have a look at the notes?

13 MR. EISENBERG: Surely.

14 I am also going to show the witness the notes he
15 made on the originals.

16 THE WITNESS: That's right, just that one side.

17 MR. KAUFMAN: I see two papers.

18 THE WITNESS: But only the one side I am using for
19 the March 3rd meeting. You continued to turn all the pages.

20 MR. KAUFMAN: It is all stapled together.

21 THE WITNESS: I know, but I am looking at one side.
22 I don't mind if that is permissible, okay.

23 MR. KAUFMAN: You can have your choice. I subpoenaed
24 it too. I could wait until later.

25 THE WITNESS: I assume it is proper procedure, that

1 is why I am getting involved.

2 Q Now, Mr. Colavito, have you reviewed those notes?

3 A Yes. There's a number of points that I mentioned.

4 I mentioned to Dave that I understood there were a
5 number of new employees in the shop.

6 I never received their names or addresses, starting
7 dates or rates of pay and I wanted those. I would like to
8 have those.

9 And that was raised at this meeting.

10 Q Did you ask anything else about these new employees?

11 A Their rates of pay, their starting dates, when
12 they -- their classifications, what kind of work they did
13 and the names and addresses.

14 He said he would get them for us.

15 Q You have mentioned that you have discussed
16 bargaining unit.

17 Did you make any proposal concerning the bargaining
18 unit?

19 A I can't say from these notes whether I did or not.

20 MR. KAUFMAN: Can the record reflect that the
21 witness is now looking at a document which purports to
22 be proposals which were marked as GC 13 for identification
23 but are not in evidence.

24 JUDGE WEIL: Is that 13?

25 MR. EISENBERG: Yes, that is what they are.

JUDGE WEIL: Yes, the record may reflect that.

A I made a modification from my proposal and using as a base the company's proposal on the bargaining units.

Q What was your modification?

A Well, instead of ours we discarded, make a simple proposal out of it by taking their second paragraph and modification of their proposal and I can read it.

Q What was the modification?

A Well, as I said, I dropped -- I dropped our proposal, is that right?

I dropped their proposal which dealt with the address and used their second paragraph of their proposal and I modified that to this point, that the agreement shall be applicable to all production, maintenance employees employed by the employer including lead men, pattern and model makers and that is their language, and drivers.

It is their language and then adding on our part and to work done by such production maintenance employees in and about the company's shop.

That is the modification we put into their proposal.

Q What was the response of the company?

A That they didn't like the idea of the address.

1 They felt that the address was one in which the
2 company was only concerned with in dealing with the
3 union and the employees, that if they wanted to move and
4 go somewhere else they didn't want to be burdened with
5 the union or necessary to all the employees and we
6 discussed that and I maintained this was a major
7 compromise on our part.

8 We took a number of obstacles that they had balked
9 about in the past, the site question, the International
10 and so forth.

11 They ought to consider it and he said they would
12 and he would get back to me on this in a response.

13 Q Mr. Tolmach said he would consider what?

14 A Consider my modification.

15 Q On the bargaining unit?

16 A Yes.

17 Q Were any other provisions of anybody's proposals
18 discussed, any other ones discussed at this meeting?

19 A I can't think of anything else.

20 Section 5 as the company proposed I agreed.

21 Q Which was what?

22 A Checkoff.

23 I dropped the plant clericals from our proposals so
that tying with this proposal would sort of wrap up
1 and 3 if they would agree to it.

1 I proposed two holidays, modified our holiday
2 demands to two holidays, the day after Thanksgiving
3 and the day before Christmas.

4 We had 13 holiday proposals and we now brought it
5 down to 12, 12 1/2. That is about it, I think.

6 Q You had mentioned that he gave you the union security
7 clause and it is in evidence.

8 I am referring to Mr. Tolmach. Was that discussed
9 at all?

10 A I don't think to any great length. I said it was
11 no, you know, certainly wasn't a union security clause,
12 and in the light of all these years and what had happened
13 to the employees, some who have been fired, some who have
14 quit and the length of time that, you know, it really
15 was no union security clause.

16 Q Were any other clauses that you can remember or
17 proposals discussed at this meeting?

18 A I can't remember.

19 Q Were hours of work discussed?

20 MR. KAUFMAN: Objection, your Honor, the witness
21 testified as to what he remembered. He has refreshed
22 his recollection with notes. He has refreshed his
23 recollection with a contract and now we have another
24 leading question and at some point the leading questions
25 have to stop after the witness has had a chance to

1 refresh his recollection.

2 JUDGE WEIL: I don't know why at this point.
3 Overruled.

4 You may answer.

5 A Yes, they agreed to our modification of the first
6 two paragraphs of our proposal as I modified in the past,
7 but they still held fast to the question of avoiding
8 mutual agreement on the changing off hours.

9 They wanted to maintain that same position
10 throughout. They wanted unilaterally to have that right
11 to handle that problem.

12 Q Can you explain what modification you are
13 referring to?

14 A We had, as I said yesterday, we had a provision
15 that covered a seven and a half hour day and language
16 there that would cover that and we wiped it all out
17 and the only language referred to, an eight hour day and
18 a 40 hour week for the first shift where we had a six
19 and a half hour day for the second and third shift
20 and we changed the language so it is a seven hour day
21 for the second and third shifts and that was the
22 modification we made in the language.

23 Q Do you remember if overtime was discussed at all?

24 A Yes.

25 Q Will you tell us what you said and what Mr. Tolmach

1 or whoever else said.

2 MR. KAUFMAN: Did the witness say yes, he remembers
3 overtime being discussed?

4 THE WITNESS: Yes.

5 MR. KAUFMAN: What paragraph number was that?

6 THE WITNESS: Section 7.

7 They agreed to double time again for Sunday overtime.

8 Q Can you repeat that answer? I didn't hear that.

9 A They repeated the double time again for Sunday
10 overtime.

11 I think they had agreed to it in the past but when
12 the January draft came in I think it was modified backwards
13 to the time and a half, I believe.

14 Q Can you tell us what was said?

15 A Well, when I pointed out that the company had
16 previously agreed to it and the draft didn't reflect
17 that agreement, I don't remember if he recognized
18 it was a mistake or if it was a change in position.

19 I don't remember really if that was reflected in
20 the discussion, I just can't remember it.

21 Q Was anything else discussed?

22 A I believe that is all.

23 Q Under what circumstances did this meeting end,
24 do you remember?

25 A We set up another meeting. A date was agreed upon.

1 Q When was the next meeting set up for?

2 A I think in the middle of March, the 14th or something.

3 Q Can you tell us what was said with respect to
4 setting up a new meeting?

5 A Well, a date was agreed to. He proposed a date
6 which I agreed to, and the earliest date wasn't that far
7 off but it was near in terms of before we broke up.

8 Again I raised the question of, you know,
9 maintaining a consistency in negotiations.

10 We had a big gap between November 22nd and March
11 3rd, between meetings, and I told him that when he
12 referred to the end of February sometime that -- the end
13 of January, that one of the problems was Bruce was out
14 of town, that around the 5th of February I checked with
15 the men and the men told me he was only out of town
16 the first two weeks of January.

17 Otherwise, outside of one day or two he wasn't
18 around, he was around and so, you know, I couldn't
19 understand why he raised this, and especially since
20 a number of times we met without him anyway.

21 Q Did the meeting take place as scheduled?

22 A Yes, it did.

23 Q When did it start?

24 A In the afternoon.

25 Q Do you remember how long the meeting was?

1 A A couple of hours, all the afternoon meetings
2 were a few hours the most.

3 MR. KAUFMAN: Can we have a date on this meeting?

4 THE WITNESS: I think it was the 14th.

5 MR. EISENBERG: 14th.

6 Q Do you recall who was present at the meeting?

7 A I think Bruce Gitlin was there and Dave and myself.
8 I don't know if Tony was there or not.

9 Q Can you tell us what happened at the meeting with
10 respect to what the parties said from the beginning to
11 finish?

12 A At this meeting I was given the names, starting
13 date, I believe, and --

14 Q And what?

15 A And the wages rates of the new employees.

16 Q Were you given any of the other information you
17 requested?

18 A May have been given some bonus, couple of years
19 of bonus for employees who receive bonuses.

20 I would have to look at the document which they
21 gave me to, you know, to refresh my memory on that, but
22 I know it was done over a period of two meetings.

23 Some stuff was given me at that meeting and some
24 stuff was given to me at the next meeting after that.

25 MR. EISENBERG: I ask that that document be marked as

1 General Counsel Exhibit No. 17 for identification.

2 (Document marked General Counsel
3 Exhibit 17 for identification,
4 of this date)

5 Q Mr. Colavito, I show you General Counsel's Exhibit
6 No. 17. Can you identify that document?

7 A Yes, this is the thing I was referring to in terms
8 of names of the people, the wage rates and starting times.

9 Q There is a lot of writing on that document. Can
10 you tell us how that document was prepared?

11 A It was prepared by the company, what was prepared
12 on the 14th was incorporated.

13 That was given to us on the following meeting, the
14 24th I put in pencil.

15 Q What precise information were you given on the 14th?

16 A I was given the names of the new employees hired
17 since September 1st of '74, the wage rates.

18 I was given the listing of other employees who
19 had received bonuses and what bonus they had received
20 for the year '74.

21 That is all I got at that meeting.

22 Q What did you receive on the next meeting?

23 A I received the starting dates of the new employees,
24 their classification of new employees, and I received
25 their addresses of new employees and I received the
bonuses for employees who had received bonus for the year

1 '72 and '73. '71 they said was not available.

2 Q What was the date of that next meeting that you
3 received?

4 A The 26th of March.

5 Q How did you happen to get that information?
6 How was it actually transmitted to you?

7 A I think they went on the phone and then they got
8 off the phone.

9 Q Who got on the phone?

10 A I think one meeting was Bruce, the first meeting,
11 I believe, and the second meeting I think was Dave, I
12 think.

13 MR. EISENBERG: I offer in evidence --

14 MR. KAUFMAN: Could I see what you are looking at?
15 You are not offering this back page?

16 MR. EISENBERG: No, just the front page.

17 MR. KAUFMAN: Voir dire, please.

18 JUDGE WEIL: Yes.

19 VOIR DIRE EXAMINATION

20 Q (By Mr. Kaufman) The document which is General
21 Counsel's Exhibit 17 for identification, the names
22 on it, Solon, Rafael, Catano, Ivan, is that the company's
23 handwriting?

24 A Yes.

25 Q What is the pencil mark your handwriting?

1 A Yes.

2 Q Directing your attention to where it says "Given
3 to union".

4 A Yes.

5 Q When was that written on the top?

6 A Probably at the second meeting or the first meeting,
7 probably the second meeting.

8 Q Can you say with all certainty that it was written
9 at the top at the second meeting?

10 A I say probably the second meeting because everything
11 else is in pencil and that is in pen. Might have been.

12 Q Could it have been after the second meeting?

13 A No.

14 Q Could it have been when you gave the exhibit to the
15 board you were explaining it to them?

16 A Oh, no, no way.

17 Q Excuse me?

18 A No way.

19 Q Well, you have ink 3/14, penciled 3/26.

20 A Right.

21 Q And it is your testimony that was made at the second
22 meeting when you wrote those?

23 A Yes.

24 Q And the pencil marks were also made, all of the
25 pencil marks were made at the second meeting?

1 A Yes, Dave was reading them off the phone.

2 Q What meeting was that?

3 A 26th, the pencil.

4 Q 3/26?

5 A Yes.

6 Q Now, what about the ink marks just above the name
7 where it says Pat? I'm looking at the right-hand side of
8 the page where the names Pat, Rocco, Bernie, Linzo,
9 Carmel and right above their names are numbers 450, 575.

10 A I put those —

11 Q You put those in?

12 A That's right, I transferred them from other sheets.

13 Q What day did you do that?

14 A Sometime later. Might have been in between the two
15 meetings, might have been after.

16 Q In between the two meetings or after?

17 A Right.

18 MR. KAUFMAN: I have no objection.

19 JUDGE WEIL: It is received.

20 (General Counsel's Exhibit 17
21 for identification received in
evidence, of this date)

22 Q (By Mr. Eisenberg) Going back again, Mr.
23 Colavito, to the March 14th meeting, I believe you were
24 explaining to us what transpired at that meeting as
25 to what was discussed.

1 Will you tell us what was discussed, what the
2 parties said at this meeting?

3 A Well, I raised the question of welfare and pension
4 which I still had not received in which they said they
5 would see to it I get it.

6 We had some discussion on the question of safety
7 I know. I was questioning whether on two questions and
8 one on the water cooler because I questioned Dave on it,
9 if the company really meant when the company would provide
10 water, and the original language provided for water cooler,
11 whether it was something else left out and he said no.

12 Bruce said, no, "We meant water", the company would
13 provide water. He says "We have good water through our
14 taps".

15 And I just was a little surprised with his attitude,
16 that if he was rejecting the idea of a water cooler why
17 would he incorporate in his proposal water?

18 Just surprised me and we had some kind of hot
19 discussion on that, I guess.

20 Q Can you remember what the discussion was?

21 A Well, his position was yes, you know, he wasn't
22 saying it was a mistake. No, we meant water, that we
23 will provide water for the employees, and I just got back
24 the first time in all my experience I ever came across
25 a proposal along those lines.

1 I can see him leaving out, he didn't want to
2 supply a water cooler or have one in the place, but I
3 just couldn't understand it and we went at it, that is all.

4 Q Were any other items --

5 A Safety shoes, and the company felt the men were
6 safe without safety shoes, even with safety shoes because
7 of the danger of the heavy plated or heavy material
8 falling on them would shear their toes and so forth and
9 our position was that all the shops use it, metal
10 fabricating field and that we have contracts with and
11 it provided a certain degree of safety for the employees
12 and the employers recognized it, the insurance companies
13 recognized it too.

14 Q Do you recall if any other matters were discussed
15 at this meeting?

16 A I don't know if it was at this meeting or the
17 previous meeting we discussed the question of when
18 the economic wage increase was to be provided, when it
19 would be retroactive too and I think the company said
20 when we sign the agreements.

21 I pointed out that the men usually got increases
22 at the beginning of the year. Well, he said their position
23 was as of the signing of the agreement.

24 Q What was your position? Did you communicate that?

25 A I said as soon as we got the material and dealing

1 with the job classification of the people we would
2 propose a wage package proposal as soon as we got the job
3 rate down in operations of the workers.

4 A Had you made a wage proposal prior to March 14th?

5 A No, I did not.

6 We had one original proposal and we were waiting
7 for some job descriptions and breakdown of responsibilities
8 to modify that.

9 I think I required -- I asked him if they had an
10 answer on my proposal, if they considered bargaining
11 units and the response was they wanted to maintain the
12 addresses, the address of the company in their original
13 proposal and they wouldn't agree to our modification on
14 that.

15 Q Do you remember at the March 14th meeting if
16 anything else was discussed?

17 A I think we got into a discussion about death in
18 the family and leave of absence, three days pay for a
19 benefit program.

20 Q Can you tell us what was said, what dues would be
21 and what did Mr. Tolmach or Mr. Gitlin say?

22 A I raised a question based on their last proposal,
23 that it was discriminatory because it dealt with payment,
24 would be aside from the fact it had to be working days
25 lost time but it would be from the dates of the funeral

1 and I said that people of the Jewish faith generally,
2 when there is a death in the family, takes place almost
3 immediately and why would they maintain a position
4 like that?

5 I thought three days leave, I can understand they
6 wanted to hold on to work days, but why from the date
7 of death?

8 It would be discriminatory against some workers.
9 We didn't have that anywhere and --

10 Q Would you please tell us what was the position they
11 took and what was the position you took?

12 A That is the position I took.

13 Q What was the position they took?

14 A Well, they said they didn't mean it to be that way.

15 Q Can you tell us what was the position they took?

16 A It was in their draft, the language was in their
17 draft.

18 I would like to refer to it. I don't have it in
19 front of me, the second draft.

20 JUDGE WEIL: Is that General Counsel's 15?

21 MR. EISENBERG: Correct, your Honor.

22 JUDGE WEIL: Let the record show general counsel
23 just handed Exhibit 15 to the witness.

24 Q Can you tell us what your position was and what
25 their position was?

1 A My position was that we should eliminate the
2 question, the phrase from the day of death to the day
3 of burial, both inclusive, and also leave out the
4 schedule workday.

5 In other words, whether they are workdays or not,
6 our original proposal which didn't provide for the
7 question of whether it was workdays or not, they allow
8 three days.

9 Q Can you explain what you mean?

10 A Sure, our clause provides for --

11 MR. KAUFMAN: Objection.

12 If the witness is testifying about what he told
13 Mr. Tolmach then I have no objection, but if he is
14 explaining what the clause means, the contract is in
15 evidence and speaks for itself.

16 MR. EISENBERG: I will withdraw the question.

17 THE WITNESS: Okay.

18 Q Do you remember if any other items were discussed?

19 A No, I just can't without referring to my notes.

20 Q Was vacation discussed at all?

21 A I can't remember unless I refer -- the meetings
22 were kind of close and I'm not sure at which meeting
23 it was discussed.

24 I know somewhere in the spring.

25 Q Would your notes refresh your recollection?

1 A They should.

2 MR. EISENBERG: With the permission of your Honor.

3 JUDGE WEIL: Go ahead.

4 THE WITNESS: Okay.

5 Q I ask you again, Mr. Colavito, was vacation, an
6 item of vacation at all discussed at this March 14th
7 meeting?

8 A The only aspect of a vacation was discussed was
9 the question of the company had gone backwards in its
10 draft, three four ten, went back to three four ten.

11 We had originally received a proposal of three
12 four eight.

13 Q What did you say?

14 A And they denied it.

15 I told them they had gone backwards and they denied.
16 They said they never made such a proposal and I said
17 they gave us a cost estimate of four cents an hour and
18 they still denied they said -- they never made that offer.

19 I remember discussing the safety and health issue
20 more than what I expressed before.

21 The company said they didn't think safety and
22 health was an issue and I pointed out to them that the
23 employees, one of the main issues they had come to us
24 about was the fact that the toilets were disgusting and
25 that was one of the issues that was paramount in their

1 mind at the time, besides all the questions of
2 lack of fringe benefits and the lower wage rates and
3 lack of classifications.

4 I told them that was back in '71 so I thought his
5 remarks were not in line with what the reality was.

6 Q Did they make any response, did either Mr. Gitlin
7 or Mr. Tolmach?

8 A I don't remember any more than what I said.

9 Q Will you tell us under what circumstances this
10 meeting ended?

11 A Agreed that we had enough for the day, the company
12 felt we ought to set up another meeting and Dave looked
13 at his calendar and we set one up for the 26th, the
14 earliest possible date.

15 Q Can you tell us what was said with respect to
16 arranging this next meeting?

17 A It was agreed and he said it was his earliest
18 possible date and I agreed to meet on that date.

19 Q Was anything else other than a date discussed for
20 the next scheduled meeting?

21 A Not at the end of the meeting, no.

22 Q Well, as to when it would start?

23 A Well, the starting time was in the afternoon. I
24 don't remember what hour it was.

25 Q Did you meet with the company as scheduled on

1 March 26th?

2 A Yes, I did.

3 Q How long did the meeting occur?

4 A It was in the afternoon. It was also an afternoon
5 meeting, usually the same amount of time, couple of
6 hours.

7 I think it was Dave and myself, I don't think Bruce
8 was there and we -- I raised the question of the
9 information that was lacking, addresses, some of the
10 bonus years, starting dates and so forth.

11 Q You already testified to that; is that correct?

12 A Yes, that is what took place at this meeting.

13 Q What else transpired at this meeting? Can you tell
14 us what you said and what Mr. Tolmach said with respect
15 to everything that transpired?

16 A I think at this meeting I made a proposal of a
17 vacation.

18 I modified our proposal. I said we would drop the
19 vacation fund with this company. We would go for vacation
20 program, one for one.

21 One week for one year of service, two weeks for
22 two years of service and one day of each year of service
23 thereafter with a maximum of five weeks, a top of five
24 weeks and that we would have to work out some rules
25 that govern questions like pro rata vacation, and if

1 they got on termination and vacation periods and
2 obligation to take vacations and things like that.

3 But basically that was our program and we would
4 drop our proposal for vacation fund, coming into the
5 vacation fund.

6 Q Did Mr. Tolmach have any response?

7 A Well, he said he would take it under advisement,
8 but he thought they wouldn't move from their last proposal,
9 the three four ten top.

10 Q Were any other items or matters discussed?

11 A We got back, I believe to Section 1 and I think he
12 had tried to get some more response from the company on
13 that.

14 Q Which was the second one?

15 A Bargaining unit. I am not sure I was successful.
16 A lot of other issues discussed but I would have to check
17 my notes to check my memory, refresh my memory on that.

18 Frankly some of my notes --

19 Q You don't recall if anything else was discussed?

20 A Frankly, some of my notes would be on the various
21 documents I used that we modified as we went along
22 too, so it might be there too.

23 MR. EISENBERG: With the permission of your Honor.

24 JUDGE WEIL: Check it.

25 MR. KAUFMAN: Your Honor, may I inquire whether the

1 witness has now exhausted his recollection of the
2 whole meeting at this point before he is looking into his
3 notes?

4 JUDGE WEIL: You have, have you not?

5 THE WITNESS: Yes.

6 JUDGE WEIL: I thought that was his testimony.

7 MR. KAUFMAN: Thank you.

8 THE WITNESS: Okay.

9 MR. KAUFMAN: May I see what the witness has seen?

10 THE WITNESS: Sure.

11 MR. KAUFMAN: May I ask the witness a question?

12 I don't understand one of his words here.

13 JUDGE WEIL: Yes.

14 MR. KAUFMAN: I am looking under No. 12 for his notes
15 of 3/26 and I have asked the witness whether this is the
16 word get or got and he has responded that it is the word
17 get.

18 THE WITNESS: Yes.

19 MR. KAUFMAN: Okay, thank you.

20 Q (By Mr. Eisenberg) I ask you now, Mr. Colavito,
21 could you tell us what else, if anything, what other
22 items were discussed and indicate what you said or what
23 any representative of the company who was there responded.

24 A We discussed Section 12 which deals with plant
25 visitation and we had some discussion around the plant,

1 interference by the official of the union if he
2 visited the plant without prior notice.

3 Again I tried to work on the basis of trying to
4 clean up some loose points that were of minor differences.

5 Certainly they should have been cleaned up a long
6 time ago and I sort of plugged away at that.

7 Why can't we agree on this, our guys are very easy,
8 our representatives.

9 They can't stay long, they are not interested in
10 interfering. They still want to have the free
11 possibilities and if there is something wrong in the
12 shop to be available to investigate it thoroughly and
13 they are not interested in interfering in production.

14 Really interested in administering the contract.
15 Why the hell can't we clean this matter up?

16 Well, he says, well the company has to get used to
17 a union and this is a problem that they fear, that
18 a union may stop production, talk to one guy and it is
19 a small shop, everybody is fighting for the importance
20 of an operation, so that wasn't resolved.

21 I raised again the questions of the addresses and
22 that kind of stuff during this meeting.

23 The classifications of the employees that still
24 have not been received, the classification of job
25 operation and tasks and I still had not received that.

1 The welfare and pension, the welfare booklet
2 and the program and the pension costs.

3 Q Do you recall if anything else was discussed?

4 A Yes, we proposed as a means of resolving the
5 120 day probationary period they were requesting for new
6 employees, inasmuch as they made the argument, they
7 said that it was required for the skill categories,
8 I was going to propose modification of the skilled
9 categories from our 30 days to 45 days, allowing the 45
10 day probationary period for lead men and layout.

11 That was their company category in the shop and
12 because they said they wanted to see how a man developed.

13 It wasn't a question of, you know, if he had the
14 immediate skills and sense of responsibility.

15 He didn't think, they didn't think it was, you
16 know, settled, the issue but he said they would check
17 with the company on it.

18 For the remaining employees, remaining categories,
19 the 30 days we had originally proposed for all categories
20 would stay so it was a modificatin for those two
21 categories.

22 Q Under what circumstances did this meeting end?

23 MR. KAUFMAN: Objection. I object to the form of
24 the question.

25 JUDGE WEIL: Overruled.

1 A Dave I think was at this meeting, or one of
2 these meetings, tired, had a headache and we agreed to
3 terminate the meeting after I think it was a couple
4 of hours.

5 Q Were arrangements made for new meeting at this
6 meeting?

7 A We did make arrangements at this meeting, but the
8 earliest he could make it was I think the middle of the
9 next month.

10 I forget the date. Might have been the 16th or
11 18th, something like that.

12 Q What?

13 A The 16th or 18th.

14 Q Of April?

15 A Yes, that was the earliest date he could make and
16 I agreed since that was the earliest date he could make,
17 I had agreed that was the date for the next meeting in
18 the afternoon.

19 Q Was there a meeting, a next meeting in the middle
20 of April?

21 A Yes, there was, I believe there was.

22 Q Do you recall the date?

23 A I think it was the 18th. I have to check it out.

24 Q When did this meeting begin?

25 A In the afternoon.

1 Q How long was this meeting?

2 A A couple of hours, the most.

3 Q Who was present?

4 A I don't recall. Dave was present, I was present
5 but I don't recall if anyone else was present.

6 Q Can you tell us what occurred at this meeting with
7 respect to what was said by yourself and anyone else
8 that was at this meeting from the beginning to the end?

9 A We got into a discussion on section of the
10 bargaining unit and in the course of that discussion
11 Dave made a proposal that he felt should satisfy us and
12 that was, he said "Look, you are apprehensive about the
13 place moving, you are apprehensive about jobs being
14 lost. If we go out of business or move we will negotiate
15 a severance clause."

16 He said, as far as subcontracting, he says, "We
17 will just keep on doing what we did in the past" and
18 he made some modification in the language which I have
19 to look at it in order to remember what it was.

20 I can read it if it is okay.

21 Q Do you remember at this point?

22 A No, I can't. I wouldn't remember. I wrote the
23 language down that he gave me.

24 MR. EISENBERG: With the permission of your Honor.

25 MR. KAUFMAN: Again --

1 JUDGE WEIL: What? From what are you planning
2 to read that?

3 THE WITNESS: This, the original draft I made notes.

4 MR. KAUFMAN: I have no objection to that.

5 JUDGE WEIL: Go ahead.

6 A He says the employer shall negotiate with the union
7 concerning severance pay for employees if there is a
8 plant shutdown or if the company moves or goes out of
9 business, sells or merges with another company.

10 Now, he didn't agree to sales or mergers with
11 another company and --

12 MR. KAUFMAN: What was that? I'm sorry, I lost that
13 last --

14 JUDGE WEIL: He said no, he didn't agree to sales
15 or mergers with another company.

16 MR. KAUFMAN: Is he reading language that Dave
17 Tolmach proposed?

18 THE WITNESS: Yes, that is what I said.

19 JUDGE WEIL: Go ahead.

20 A (Continuing) An employer shall continue to
21 subcontract as it has in the past.

22 He would agree to that with his old draft, in other
23 words, add this to his draft, original draft on the
24 bargaining units.

25 It narrowed down to two questions and one is the

1 plant location.

2 Q Can you tell us what was said?

3 A Okay, I'm going to come to what the discussion went
4 on trying to solve this problem.

5 One was the work of the employees which was
6 primarily concerned with the savings of jobs and holding
7 on to jobs, and we wanted the work covered because he
8 can get down to a small group if he wants to eliminate
9 certain employees and sub the work out.

10 Q You mean subcontract the work out?

11 A Yes subcontract the work out.

12 Q Please try if you can to be as specific as possible.

13 A That was one of the main things we wanted to have
14 covered and I says as far as the subcontracting and as
15 far as severance, they should be dealt with in different
16 clauses, they shouldn't be covered in this particular
17 clause, and we can, I am sure, resolves those two issues
18 easily if we can resolve this bargaining unit job, so
19 my feeling was that we should separate the three items
20 instead of incorporating them in the one bargaining unit
21 proposal.

22 Q Was there any response to this by anyone?

23 A We didn't agree. I mean we had our differences
24 and we didn't agree.

25 Q Anything else at this meeting discussed?

1 A I made reference I had not received
2 information yet on the welfare program or classifications,
3 job rates, job responsibilities and he said he would
4 look into it.

5 I don't know what else unless I refer to notes again.

6 Q You don't remember anything else that was said;
7 is that your testimony?

8 A I can't think in terms of which issues were
9 discussed.

10 Q What notes do you propose to look at?

11 A The notes I have of meetings that took place.

12 Q On the small sheets of paper?

13 A Small sheets and possibly in the --

14 MR. EISENBERG: With the permission of your Honor.

15 JUDGE WEIL: Yes.

16 THE WITNESS: Did you say he wants to see them?

17 MR. KAUFMAN: Yes.

18 Q I ask you, Mr. Colavito, was anything else discussed
19 at this meeting of April 18th?

20 A Well, we discussed the wage question. I mentioned
21 bargaining unit. We covered that. We discussed the
22 wage question again in terms of --

23 Q Well, tell us what was said. What did you say and
24 what did Mr. Tolmach and Mr. Gitlin say?

25 A I don't think Gitlin was there, just Tolmach.

1 Again I pointed out that the cost of living
2 had gone up at least 15 percent and the company ought
3 to make a more generous offer than its 25 cents per hour,
4 and that if we, you know, are susceptible to a
5 modification of our proposal, but certainly 25 cents
6 doesn't even begin to do anything for the employees.

7 They had given some employees even more than that
8 years ago. When double digit is taking place we would
9 not rectify the past catchup.

10 Q Were you asked for a proposal at this meeting or
11 before this meeting?

12 A No, they never asked us for a wage proposal.

13 Q Did you make one at this meeting?

14 A No, I did not. The reason we didn't, we were still
15 waiting, we felt the classification --

16 MR. KAUFMAN: Objection.

17 JUDGE WEIL: Sustained.

18 A Nothing came out of the discussion. The company --

19 Q Was anything else discussed and if so, just
20 confine your answers to what was said.

21 A We had some discussion around the funeral leave
22 and we were pretty close on it although we had not
23 resolved it.

24 Q What was said?

25 A Again in dealing with the three days pay for a

1 funeral leave we thought it was very restrictive.

2 Most people took more than the three days.
3 It was just that it would go to compensate for part of
4 the time lost because of the grief of the family and
5 responsibilities had to be taken up and that they should
6 make it -- every other company we had under contract
7 three days pay for a death in the family.

8 He was urging it be wrapped up the way they had it
9 and we didn't finally wrap it up on this day I don't
10 think unless I can take a look at the notes to see if we
11 did, but I know subsequently we did wrap it up.

12 We discussed the union security. Again I pointed
13 out I couldn't understand the company's position on
14 not agreeing to the union security.

15 I said most racketeer unions have an agreement
16 on that rapidly. That is one of the first things they
17 get and here the company is fighting so hard against
18 us getting a union security, specifically with the
19 past experience with the company of four years gone by
20 and they knew what happened in those four years, of
21 people fired, quitting, and employees being intimidated
22 by this experience, not benefiting from the action they
23 took towards getting the union in there.

24 The company says well, Mac was dead set against it.
25 He might go along with the security clause that they

1 proposed.

2 Q When you say Mac who are you referring to?

3 A Mac Edwin. (Phonetic)

4 Q Do you know who Mac Edwin is?

5 A Bruce's father. I think he is the main officer
6 of the company.

7 MR. EISENBERG: Do you want a stipulation concerning
8 that?

9 MR. KAUFMAN: What do you want to stipulate?

10 MR. EISENBERG: As to his position with the company.

11 MR. KAUFMAN: We will stipulate that Mac Gitlin
12 is an officer of the company.

13 MR. EISENBERG: I will accept that.

14 Your Honor, can that stipulation be received, that
15 Mac Gitlin is an officer of the company?

16 JUDGE WEIL: I will receive it.

17 MR. EISENBERG: Thank you.

18 Q (By Mr. Eisenberg) Mr. Colavito, how did the
19 meeting end?

20 A At a point where the company looked at its calendar,
21 checking the calendar for the next meeting.

22 At that meeting he couldn't tell us what was
23 available because he was busy.

24 I think it might have been that he was at that
25 point either going to Hawaii or Pennsylvania, I'm not sure,

1 and the contract --

2 Q Can you tell us what was said? What was discussed
3 at the end of the meeting with respect to how the
4 meeting ended and with respect to setting up another
5 meeting?

6 A This is what the company called us, he was tied
7 up with his calendar.

8 Q Who?

9 A Dave Tolmach was present for the company that day.
10 He had some negotiation coming to a head and he couldn't
11 say how long he would be tied up with it but he said
12 he would call us in terms of giving us a date for the
13 next meeting.

14 Q Was the next meeting arranged at this meeting?

15 A I don't believe so. I think it was done by phone.

16 Q Do you know how this was done?

17 A I think he was going to call us the next day
18 and he didn't and I called him thereafter.

19 I think he left word with the office about a
20 meeting for the 2nd of May I think.

21 Q Did a meeting occur on May 2, 1975?

22 A I think it did, yes.

23 Q What time did the meeting start?

24 A In the afternoon.

25 Q How long did the meeting last?

1 A Usual, couple of hours.

2 Q Do you recall who was present?

3 A Dave, myself. I'm not so sure if anyone else was
4 present.

5 Q Will you tell us what occurred, what was said at
6 this meeting from beginning to end?

7 A I don't think I could unless I look at my notes.
8 I am getting a little bit intertwined here.

9 Q Do you have any recollection at all?

10 A Nothing stands out in my mind in terms of --

11 Q What notes are you proposing to look at?

12 A The same notes that occurred in relation to that
13 meeting.

14 Q On the small sheets of paper?

15 A The small sheets.

16 MR. EISENBERG: With your permission, your Honor.

17 JUDGE WEIL: Yes.

18 MR. KAUFMAN: Your Honor, would it be possible to
19 take a five minute recess while he is looking at these
20 notes?

21 JUDGE WEIL: I think it will be an excellent idea.

22 We will take a 10 minute recess.

23 (Short recess taken)

24 JUDGE WEIL: The hearing will be in order.

25 MR. KAUFMAN: I think he was reviewing the 5/3 notes;

1 is that correct?

2 JUDGE WEIL: Yes.

3 MR. EISENBERG: Yes.

4 MR. KAUFMAN: Can I look at that now that he has?

5 MR. EISENBERG: Yes.

6 MR. KAUFMAN: Could I ask the witness question on
7 the notes?

8 VOIR DIRE EXAMINATION

9 Q (By Mr. Kaufman) Are these part of the notes
10 that are above the date 5/2/75, are those part of the
11 notes at the 5/2 meeting or is that something separate?

12 A This is the meeting but we discussed these, this
13 was discussed at this meeting.

14 Q So this is part of the 5/2 --

15 A Part of the issue that was discussed. I wouldn't
16 say it was minutes. This was an issue that was discussed.

17 MR. KAUFMAN: Thank you.

18 Q (By Mr. Eisenberg) Mr. Colavito, can you now
19 tell us what was said from the beginning to the end
20 of this meeting?

21 A We discussed the question of probationary periods
22 and the concept again of developing abilities with new
23 employees.

24 Q Can you tell us what was said, please.

25 A And the company's position was they required 120

1 days probationary period because they needed that
2 much time in order to see how a man progresses as new
3 jobs came into the shop because most of their jobs were
4 of a short duration, and a man would be tried out in
5 terms of various metals and various jobs that came into
6 the shop.

7 They were again using as an example people that
8 worked on brakes, kind of metal they dealt with, bronze,
9 stainless steel, aluminum and so forth; and the jobs
10 were short run.

11 Therefore they wanted more than the 120 day period.

12 We said the man with the basic skills and
13 responsibilities knows all about the machine, knows about
14 metal, knows about the layout and setup.

15 He is going to apply himself to any new operation
16 that comes in in this field if he has the basic skills
17 and responsibilities.

18 We don't even think he needs 45 days. 30 days is
19 more than sufficient, even less than that is necessary
20 and we did not agree on that.

21 Q What else was discussed?

22 A We discussed the question of since I made a proposal
23 on vacation without the company participating with
24 the fund, pro rata, that will have to be worked out
25 in the contract.

1 Q Tell us what was said.

2 A That's what I'm saying, so I introduced the
3 question of some concept that had to be spelled out in
4 the contract that was not in the proposal because there
5 were items that would be covered under the trust fund,
6 pro ratas and so forth.

7 Q What did you discuss? What did you spell out?

8 A Under the fund the employees will be entitled to
9 pro rata termination, no matter what. The company would
10 go along only as far as they were for pro rata except
11 if an employee was separated for cause and I said under
12 the fund he could get it.

13 What if he quit or was fired or so forth, and that
14 he wanted the same protection for the employees and
15 get it no matter what the termination was for.

16 Q Did you specify what you meant by pro rata?

17 A Pro rata vacation, yes, a pro rata vacation.

18 If he was terminated before he was entitled to a
19 full vacation, let us say for six months, he would get a
20 pro rata of his full vacation.

21 Nine months it would be pro rata along that line.

22 I mean both parties understood the concept of
23 the pro rata, I believe.

24 JUDGE WEIL: Excuse me, I don't understand you.

25 Is it your testimony that the company was willing to pro

1 rata everything except discharges?

2 THE WITNESS: Yes, yes.

3 JUDGE WEIL: Thank you.

4 Q Was there any response to your proposal made at
5 the last meeting concerning vacation?

6 A No. They still maintained a three for one as
7 a maximum up top for their proposal.

8 They didn't want to go any further than that, three
9 weeks for ten years of service.

10 Q Was anything else discussed either about vacation or --

11 A We discussed when the vacation schedules should
12 have been posted by, I guess, April 15. I think the parties
13 agreed to that, the posting of vacation schedule.

14 We discussed safety in terms of the safety committee.

15 We were hung up on it. Our proposal was meeting
16 once a month.

17 The company felt it should be left flexible.

18 It is a small shop, how often would it be necessary
19 to meet after all?

20 Q Did you say meet once a month?

21 A Once a month, safety committee, the joint safety
22 committee, and I believe we felt we could get along
23 with it and we pretty much agreed if they met on a
24 regular basis that would pretty much resolve our
25 dispute between us on that issue.

1 Q Was anything else discussed at this meeting?

2 A I believe I asked him what the practice was in
3 terms of the supplying of equipment and he said they
4 supplied glasses, safety glasses, some tools, and they
5 would agree to continue whatever they were doing in the
6 past in terms of supplying equipment.

7 Q What did you say?

8 A We had asked for welding shields and protective
9 clothing and if they had to use protective clothing
10 because of loading or unloading trucks because they had
11 to go outside.

12 They were not willing to go along with this,
13 they just wanted to go along with what they had done in
14 the past.

15 We also discussed the question of prevailing rates
16 on site work.

17 Q Can you tell us what you said and what the response
18 was, if any?

19 A The company's position was they wanted to continue
20 what they had done in the past which paid a shop rate
21 if the men went on a job site.

22 We asked if the company hired outside employees
23 for some jobs and they said yes.

24 We said did they pay them a prevailing rate in this
25 area and they said yes.

1 Did their employees do similar kinds of work
2 when they went on job sites? Yes.

3 Why shouldn't they get the prevailing rate? You
4 know, they used even maybe greater skills because of
5 their skills and outside experience.

6 We thought it would be better and more equitable
7 if the company paid their employees who worked regularly
8 for them the prevailing rate.

9 It was only for a short period of time anyway.

10 They said they never did it and they did not intend
11 to do so in the future.

12 I think that is about all the issues we discussed.

13 Q When did the meeting end?

14 A It wasn't a long meeting. It was a short meeting,
15 usual short meetings.

16 MR. KAUFMAN: I object to what is usual.

17 JUDGE WEIL: Overruled.

18 Q Can you tell us how the meeting ended, what was
19 said?

20 A We agreed to --

21 Q What was said at the end of the meeting?

22 A We agreed, at the end of the meeting Dave looked
23 at his calendar and it was agreed to set a meeting a
24 week, I think it was the 9th, in the afternoon again
25 and we left on that basis.

1 Q Do you recall how the meeting ended, when
2 the meeting ended?

3 A Just that the company looked at its calendar and
4 set up our next meeting, you know.

5 Q What did you say?

6 A I said we are not getting very far, we are going
7 slow. I am trying to pick out the issues that are most
8 resolvable with small differences and we are making
9 slow progress but we have a long way to go and let's try
10 to have as frequent meetings as possible and as long as
11 possible, and they agreed that except in a week that
12 would be the earliest he could make it.

13 AS far as the daytime, the early part of the day
14 it was impossible for him to do it because of his
15 schedule.

16 MR. KAUFMAN: Can you read that part of the answer?
17 I'm sorry, I lost it.

18 (Whereupon the last answer was read by the reporter)

19 Q Mr. Colavito, did a meeting take place as arranged?

20 A No, the meeting was called off almost immediately
21 thereafter.

22 Q By whom?

23 A By the company, and it was settled for the 20th,
24 I believe, through the office, through telephone calls.

25 Q You didn't have anything to do with setting it up?

1 A No.

2 Q Did a meeting occur on the 20th?

3 A No, I cancelled that meeting. I had some oral
4 surgery that day and I got out about the time it was
5 the meeting and I called Dave up and told him I couldn't
6 make it and we set up another meeting.

7 MR. KAUFMAN: I'm sorry, can I have the last two
8 answers, please.

9 (Whereupon the last two questions and the answers
10 thereto read by the reporter)

11 Q How was that next meeting scheduled?

12 A It was agreed -- the meeting was scheduled, I
13 believe, when I made the telephone call.

14 Q What was said?

15 A We agreed on the date. I just don't remember now
16 if it was the 29th of May or the middle of June.

17 Q Do you know if a meeting occurred on the 29th?

18 A Well, if the meeting was scheduled for the 29th
19 I think it occurred.

20 Q How long was this meeting?

21 A I don't remember. I am not even sure it occurred.
22 I can't say.

23 Q Is there anything to refresh your recollection?

24 A I may have it in these notes.

25 These are notes of the meetings.

1 JUDGE WEIL: You were talking about the next
2 meeting?

3 MR. EISENBERG: Yes, the one after --

4 JUDGE WEIL: About how long the next meeting was?

5 MR. EISENBERG: Right. He is not even sure, I
6 believe the testimony was, when it occurred.

7 THE WITNESS: I know what happened on the June
8 meeting but I'm not sure if there was a meeting the end
9 of May now.

10 Q Would anything refresh your recollection?

11 A My notes may show.

12 JUDGE WEIL: Check your notes.

13 THE WITNESS: Yes, there was a meeting on the 29th
14 of May.

15 Q Do you recall when this meeting started?

16 A In the afternoon.

17 Q When it ended?

18 A Usual two hours.

19 Q Who was present at this meeting?

20 A I don't know. My notes don't show that. Dave would
21 be present of course, myself.

22 Q What transpired at this meeting? What was discussed?
23 What was said?

24 A I tried to clean up Section 9. We had a small point
25 there in terms of an employee who got hurt on the job

1 and if he had to go back for a second visit because
2 of the accident it would be compensated for any loss of
3 time.

4 I was proposing that we -- as long as the employee
5 had hours for his own doctor he would go to his own
6 doctor, fine.

7 If he couldn't get a visit to his own doctor
8 because by the time he got home he didn't have evening
9 hours, then I think the company should compensate him if
10 he took time off from his job as a result of an injury.

11 Q Do you remember if anything else was discussed at
12 this meeting?

13 A I don't know if he wants the notes or not, I'm sorry.

14 Q Do you remember?

15 A No, I don't.

16 Q You have to use the notes?

17 A I do.

18 MR. EISENBERG: Do you want to see the notes?

19 MR. KAUFMAN: Did he review them already?

20 THE WITNESS: No.

21 MR. KAUFMAN: Could you tell me what this word is
22 on the upper right-hand corner of your notes?

23 THE WITNESS: This practice.

24 MR. KAUFMAN: Thank you.

25 Q Mr. Colavito, can you now tell us what else was

1 discussed and said at this meeting?

2 A Well, I tried to take two clauses, the 13th which
3 is the seniority and some of the open items and 14 in
4 terms of the funeral leave and pay for three days off
5 because of death in the family, and I suggested --

6 Q What did you say?

7 A I suggested to the company that we agreed to their
8 three work day language on Section 14 if they would agree
9 to our 45 day probationary period.

10 If they get up to 120 days, come to our 45 we
11 would accept their language on the death in the family
12 provision.

13 Q Was there any response?

14 A No. They didn't agree to that tradeoff. They wanted
15 to handle each item by itself. They weren't interested
16 in any kind of a tradeoff.

17 They felt that the Section 14, that it should be
18 resolved based on their language.

19 They moved somewhat on that. If they felt that,
20 Christ, we can wipe this out, wipe it out, you know,
21 it isn't too much difference between us.

22 I asked him again for their practice in terms of
23 the number of things like sick leave, what was their
24 practice in terms of -- who did they give, who did they
25 give sick leave to.

1 They indicated in the past they did give some
2 sick leave.

3 They said in the past they would give us a
4 proposal.

5 They never did and the information given was that
6 generally was given to guys who were not goofoffs.

7 They had a fairly -- they couldn't pinpoint it,
8 either they went through their records, but generally the
9 policy was one of where a guy wasn't a goofoff they got
10 paid for some sick days.

11 On vacation they had repeated what they told us
12 before, that if the production schedule allowed it
13 they would allow the lead man the third week.

14 If they didn't they would give him the pay before
15 the end of the year, the third week of vacation.

16 Q Did you ask for any other information?

17 A I had spoken to them about compensation, what was
18 the practice on compensation?

19 Did they pay the people if they had to go to the
20 doctor or hospital for treatment one time, two times,
21 three times and they said they couldn't, they would have
22 to go to their records in order to be able to see if
23 there was any kind of program of policy.

24 Q Did you ever get that information?

25 A No. I had asked them also in terms of their

1 classification system. I still had not received
2 any information on that and they had indicated they
3 had said something to me verbally at the first meeting
4 but I insisted on having it in writing.

5 They would get it to us as it was employed by the
6 people in the shop.

7 The welfare problem I --

8 MR. KAUFMAN: Excuse me, read back the last part of
9 that answer.

10 [Whereupon the pertinent portion of the record was
11 read by the reporter]

12 A (Continuing) Welfare program that they covered
13 for the employees was not supplied to us and again they
14 said they would try to get that to us.

15 I think that is about it.

16 MR. EISENBERG: Could I have these series of
17 documents marked as General Counsel Exhibit 18 for
18 identification.

19 (Documents marked General
20 Counsel's Exhibit 18 for
identification, of this date)

21 Q Mr. Colavito, I show you General Counsel's Exhibit
22 18 for identification and ask you to look through it
23 and identify it.

24 A Yes.

25 Q Can you tell us what General Counsel's Exhibit 18 is?

A That is the third draft of the proposals that were

1 given to us.

2 Q Who gave it to you?

3 A Dave.

4 Q Do you recall when you were given these?

5 A I believe sometime in May.

6 Q Was it early in May or late in May?

7 A I don't even remember.

8 Q Was it at this May 29th meeting?

9 A I really can't say for sure when it was.

10 Q Is there anything that would refresh your
11 recollection?

12 A I don't think so.

13 MR. KAUFMAN: I will stipulate that these were the
14 proposals that were handed to Mr. Colavito at the
15 meeting on May 29th.

16 MR. EISENBERG: Obviously I can't enter into that
17 stipulation.

18 MR. KAUFMAN: I am not going to stipulate to anything
19 that is not factual.

20 MR. EISENBERG: May we go off the record one moment,
21 your Honor?

22 JUDGE WEIL: Off the record.

23 (Discussion off the record)

24 JUDGE WEIL: Back on the record.

25 Are you sure that you had the last group of proposals

1 you said was the third draft by the end of May?

2 THE WITNESS: Yes. I just can't pinpoint it.

3 I don't know of any notes.

4 JUDGE WEIL: If you are not going to offer them
5 I will. I will receive them.

6 MR. EISENBERG: I was going to offer them.

7 I offer them into evidence at this time.

8 MR. KAUFMAN: As proposals which were received by
9 the end of May; is that it?

10 JUDGE WEIL: By the end of May.

11 MR. KAUFMAN: I have no objection to it.

12 JUDGE WEIL: Very well, received.

13 (Whereupon General Counsel's
14 Exhibit 18 for identification
received in evidence, of this date)

15 Q Mr. Colavito, how did this meeting end?

16 A It ended with the --

17 Q What was said?

18 MR. KAUFMAN: Your Honor, before we move on to that
19 I just have one statement that I would like to make
20 with respect to this.

21 JUDGE WEIL: This being GC 18?

22 MR. KAUFMAN: GC 18, right.

23 You are referring to this as the typewritten
24 material that appears here and not the pencil marks on
25 it; is that correct?

1 MR. EISENBERG: That is correct.

2 MR. KAUFMAN: Or the ink marks that appear.

3 MR. EISENBERG: That is correct.

4 As a matter of fact, maybe I will ask about that.

5 Q (By Mr. Eisenberg) Mr. Colavito, with respect
6 to General Counsel's Exhibit 18, there are various
7 marks on some of these pages that are either in pencil
8 or in ink.

9 A I made them.

10 Q You made those marks?

11 A Right.

12 Q When did you make those marks?

13 A As I analyzed, as I went through the sections and
14 as I got it, the third draft, I put the third up there
15 and where it is agreed I crossed it out because after I
16 analyzed it it was not agreed.

17 Whatever it was. If they left out a word I would
18 insert it in pencil. They are all my marks.

19 Q Where were you when you did this?

20 A When I was evaluating the draft?

21 Q Where were you?

22 A Not at the meeting.

23 Q Can you tell us, I will ask you again, how the
24 meeting ended, what was said?

25 A The meeting ended in terms of we had enough for

1 today, I have to, you know, check my schedule to
2 arrange another meeting, and the date was -- I think the
3 date was proposed.

4 JUDGE WEIL: Who had to check and who proposed
5 the date?

6 THE WITNESS: I'm sorry, in all cases it was all
7 the company's. I followed their lead in terms of what
8 was their earliest date.

9 I never, you know, outside of calling meetings off,
10 I think I called off one.

11 Initially it was up to the company in terms of
12 what was the earliest date, and I would follow through
13 and make myself available for it.

14 I don't remember if the meeting date was set at this
15 meeting but we did, however, arrange for a meeting on
16 the 19th of June, I think. I don't know -- it came --

17 Q I'm sorry, Mr. Colavito.

18 A I don't know if it came as a result of telephone
19 calls or whether a date was set up at this meeting, but
20 we did schedule a meeting for the 19th.

21 That meeting did not take place. The company,
22 Dave, called the office early that morning on the 19th
23 and Tony Schifano went to that meeting.

24 He was told the meeting was off.

25 I called later on and I told him I just got word that

1 the company called the meeting off that morning.

2 Q When you received that message did you do anything?

3 A I called the company because I was going to be
4 a little late myself.

5 Q Who did you call?

6 A Dave, I spoke to Dave.

7 Q What did you say to Dave and what did he say to you?

8 A I said "Dave, I understand the meeting was called
9 off. Let's arrange another meeting."

10 Q What did he say?

11 A He agreed to a date. We agreed to a date, I think,
12 in July.

13 Q How did that come about?

14 A Over the phone.

15 Q What was said concerning the agreement?

16 A The company checked, his lawyer checked his --

17 Q What was said?

18 A Well, let's make it as early as possible.

19 Q Who said that?

20 A I said it and he agreed.

21 Q What was his response?

22 A He agreed but, you know, "You know, Bill, I am busy,
23 but this is the earliest I can make it."

24 He looked it up and said this was the earliest
25 he could make it.

1 Q When did he say was the earliest he could
2 make it?

3 A Sometime in July. I don't know the exact date.
4 Might have been in the middle of July.

5 Q Did a meeting occur in the middle of July?

6 A I went to the office and Dave wasn't there.

7 Q Did a meeting occur in the middle of July?

8 A No, it did not.

9 Q Do you recall the date of the next meeting, the
10 one in July supposedly?

11 A It might have been the 20th or --

12 MR. KAUFMAN: Is this the meeting that he went to
13 that didn't take place?

14 MR. EISENBERG: That is what I'm referring to, yes.

15 MR. KAUFMAN: Because you said the next meeting.

16 Q Do you know the date?

17 JUDGE WEIL: Do you have any record?

18 A Either 20th or 24th, one of those days.

19 Q Do you know how that meeting was arranged?

20 A Over the phone through Dave and myself.

21 Q Were you present at such a meeting on the 24th?

22 A I went to the office and the girl --

23 Q Whose office?

24 A Dave Tolmach's office.

25 Q What happened when you got to Dave Tolmach's office?

1 A There is a receptionist and she usually
2 announced us whenever we came in, or myself, and I told
3 her I had a meeting with Dave and she said Dave is not
4 here and I have no idea of his having a meeting with --
5 he is supposed to be here.

6 So I said I know we arranged a meeting and she said
7 well, I can give you a phone number where he is at if
8 you want to call him.

9 Q As a result of that what did you do?

10 A I called Dave and Dave apologized that he forgot to
11 cancel the meeting, he was down at a downtown meeting.

12 He was awfully sorry, he said, "Let me call you
13 back tomorrow and I will give you a date on when we can
14 get together".

15 Q Did he? Were you called by Mr. Tolmach?

16 A No, he didn't. He didn't call back.

17 Q What happened? What did you do?

18 A So I had to make some phone calls. They went
19 unanswered, and finally --

20 Q Who did you call?

21 A I called Dave Tolmach's office.

22 Q How many calls did you make?

23 A At least two or three.

24 Q Did you ever speak to Mr. Tolmach?

25 A No.

1 Q What did you say on these one or all of these
2 phone calls?

3 A Leave a message for Dave that I'm anxious to get
4 a meeting set up, please have him call me, call the office.

5 No calls were being made, no calls were being
6 returned so I instructed the office to send out a letter
7 to Dave saying, you know, a number of weeks have passed
8 by and you have not responded to us and we are anxious
9 to get a meeting, something along those lines.

10 Q I show you General Counsel's Exhibit 8 in evidence
11 and ask you if that is the letter you are referring to.

12 A Yes, the middle of August, yes.

13 Q Was there any response to this letter?

14 A I think the company responded to it sometime in
15 August too.

16 Q How did the company respond to it?

17 A By letter.

18 Q I show you General Counsel's Exhibit 9. Is that
19 the letter you are referring to?

20 A Yes.

21 Q As a result of receiving that letter what did you do?

22 A I had the office call the attorney and tell him
23 the third, I couldn't make it because I was meeting with
24 a large employers committee.

25 Q The third of what?

1 A Of September date he proposed, he wasn't free
2 until the 3rd of September. I couldn't make the 3rd
3 and I gave him another date.

4 Might have been the 11th of September, one of
5 those days. I know it was the early part of September,
6 I was at the mediation, State Mediation that day with
7 a large employers committee.

8 There was a strike on in the industry.

9 Q How was the meeting for September 11th, the proposed
10 meeting for September 11th, how did that --

11 A Through telephone calls, and through telephone calls,
12 our office and his office.

13 Q Did you make those calls?

14 A No, I did not.

15 Q How did you know that a meeting was arranged for
16 September 11th?

17 A Quoted to me by the secretary of the union.

18 Q Was there a meeting on September 11th?

19 A Yes, there was.

20 Q Where did that take place?

21 A In the company's -- the attorney's office.

22 Q When did it start?

23 A In the afternoon.

24 Q How long did this meeting take place?

25 A It wasn't a long meeting. Probably shorter than

1 most afternoon meetings.

2 We had mentioned to the company that we are
3 requesting information we still did not get, especially
4 on the classification.

5 Q When did you do this?

6 A In the middle of the meeting. I mean in the middle.

7 Q What meeting are you talking about?

8 A The 11th.

9 Q Do you know who was present at this meeting?

10 A I think Bruce and Dave was present. I'm not so sure,
11 I think Schifano was present. I think Schifano was present
12 too.

13 Q Can you tell us what occurred at the meeting?

14 A We were unhappy of the fact that we were having big
15 gaps between meetings.

16 I didn't understand it.

17 He had responsibilities, yes, but they had
18 responsibility to the workers.

19 MR. KAUFMAN: Objection. Again, your Honor, I don't
20 know if the witness is testifying as to his thoughts or
21 as to dialogue which occurred at the meeting.

22 JUDGE WEIL: Was something said?

23 THE WITNESS: My thought are what I said. I'm not
24 saying what my opinion was. My opinion was verbally
25 expressed.

1 JUDGE WEIL: So tell us what it was.

2 THE WITNESS: Said the company had some
3 responsibility to these workers, they are responsible
4 for delay in their recognizing their rights and getting
5 the fruits of the struggle between the company and the
6 men and the union.

7 They ought to give some attention to resolving
8 this problem here with these workers, not just in
9 Pennsylvania, Alaska or Hawaii.

10 I said despite the fact that we didn't get the
11 classification information we are going to give the company
12 a proposal on wages.

13 Q Will you tell us what the proposal you gave was?
14 What did you say?

15 A I said despite the fact that we had asked for
16 that because the workers have not realized any benefits
17 of the representation that came to us for, we were
18 proposing and modifying our retroactive wage increase to
19 January 1, 1975, a 20 percent wage increase, and we will
20 forget about all past proposals we had in terms of
21 retroactivity.

22 It was that point in which the meeting ended because
23 the company said they wanted to study it and get back
24 to us, so it was a rather short meeting.

25 It wasn't one that went into -- I remember I had

1 stated to him too that in the early spring we had
2 modified our vacation proposal and he ought to give
3 some consideration to that.

4 We would like a response to the wage proposal
5 and we still would like the information so we could set
6 up proper classification systems from the company.

7 Q What was the company's response?

8 A The company said they would get the information to
9 us on the job operations and so forth.

10 Q Did you ask for any other information?

11 A The welfare, the welfare program. We still had not
12 received it or the pension costs, especially in light
13 of the deadlines that were being set up in terms of
14 what they estimated their costs would be.

15 Q Did you ever receive the welfare benefits
16 information?

17 A No, I did not.

18 Q Did you ever receive the pension costs information?

19 A No, we did not.

20 MR. KAUFMAN: Your Honor, I would like to move at
21 this time that the witness' answers in connection with
22 welfare costs and pension be stricken or that your
23 Honor make a finding that no violation of the act
24 can be found on the September 11th request since we had
25 filed for a Bill of Particulars with respect to this,

1 and in response to that Bill of Particulars, there
2 is no mention, as I recall it, of welfare and pension
3 costs as one of those things which the company refused
4 to respond to on September 11th.

5 I believe that under the rules of evidence where
6 general counsel submits his bills of particular -- I
7 strike that.

8 Your Honor, I apologize for the delay. It is in
9 here.

10 Q (By Mr. Eisenberg) Did you request any other
11 information that you can recall?

12 A I can't think of anything, no, outside of the
13 welfare program.

14 Q Did you request sick leave benefits?

15 A I had done at the previous meeting and I'm not
16 so sure I did it at this meeting.

17 Q Was anything discussed about when the company would
18 get back to you after your wage proposal, after considering
19 your wage proposal?

20 A We agreed I believe to set up another meeting.

21 Q How did that meeting get arranged? Can you tell
22 us what was said?

23 A Well, they wanted to consider this and they
24 opened their calendar up for the earliest possible date
25 in which a meeting could take place, and that was the

1 28th, I believe.

2 Q What did you say about this?

3 A Fine, if you can't make it any other date I have
4 no choice.

5 Q Did you try to get an earlier date?

6 A I always do.

7 Q What did you say?

8 A I said we wanted the earliest possible date,
9 extension of the contract is going on, negotiations have
10 been going on for a long time, plus the litigation and
11 everything else preceded and we want to have as early a
12 date as possible and I got a heavy schedule.

13 Q Who said that?

14 A Dave, "I got a heavy schedule and you know that,
15 Bill, I have been all over the country, I have
16 Pennsylvania".

17 I says yes, but you know there is a responsibility.

18 Q Did a meeting occur on the 29th of September?

19 A No, I called that off. I had an emergency trustees
20 meeting.

21 Q How did you call that off?

22 A I called that by phone.

23 Q Who did you speak to?

24 A I spoke to Dave.

25 I said Dave, I have an emergency trustees meeting.

1 I can meet you later on tonight, this afternoon or
2 if you prefer, tomorrow.

3 He says, "Tomorrow will be all right, Bill."

4 Q Was there a meeting the next day?

5 A The 30th, yes.

6 Q Were you present at this meeting?

7 A Yes, I was.

8 Q Can you tell us who else was present at this
9 meeting?

10 A Dave and Bruce were both there.

11 Q How long did this meeting take?

12 A About five minutes.

13 Q What happened?

14 A The company told us that they -- a petition, a
15 decertification petition was filed and therefore they
16 were not going to participate in negotiations any
17 further.

18 Q What did you do?

19 A I says I can't force you into negotiations, so
20 long.

21 Q Did you receive any of the other information that
22 you had requested on or after September 30th?

23 A On or after September 30th? No.

24 We received it prior to September 30th, 29th,
25 the 29th in the morning I understand we finally received

1 some information dealing with wage rates --
2 classification and job classification of the employees.

3 Q I show you General Counsel's Exhibit 10 in
4 evidence.

5 Is that what you are referring to?

6 A Yes.

7 Q How did you receive that?

8 A It went to the union office. Also a list of the
9 new employees which, you know, which was supplied to
10 us, for the first time he listed a new employee.

11 MR. KAUFMAN: What was that? What was the witness'
12 answer, also what?

13 JUDGE WEIL: For the first time he listed a new
14 employee.

15 MR. KAUFMAN: For the first time he listed a new
16 employee?

17 THE WITNESS: The first time that he has appeared
18 on the list, I had a standing request to the company to
19 give us the names of new employees as they came and
20 the reason I'm saying it is that it was that employee who
21 filed the petition.

22 Q Did you have any contact with the company about
23 that document dated September 25th?

24 A Did I have what?

25 Q Discuss or contact with the company concerning that

1 document.

2 A No.

3 Q Did you have any --

4 A I personally had not received it t was in the
5 office on the 29th.

6 Q When did you first see it?

7 A Sometime after the 6th.

8 MR. EISENBERG: No further questions.

9 MR. KAUFMAN: Your Honor --

10 JUDGE WEIL: Before you proceed, can the parties
11 stipulate as to the date the decertification petition was
12 filed, if one was filed?

13 MR. EISENBERG: I think it was filed around --

14 JUDGE WEIL: And the case number.

15 MR. KAUFMAN: 9/23/75, 29 RD 203.

16 JUDGE WEIL: 203. Thank you.

17 MR. EISENBERG: So stipulated.

18 MR. KAUFMAN: Does counsel have in its possession
19 any statements given by this witness? If so, would
20 you please turn them over to us?

21 JUDGE WEIL: We will stand in recess until --

22 MR. KAUFMAN: Before we do that, I would like to
23 approach you with a problem in connection with this case.

24 Yesterday at the conclusion of the hearing, this
25 witness has testified about many letters and telephone
calls that he attempted to make, and calls that he answered

1 or calls that were made for him, and as a result of
2 his testimony and because general counsel has been unable
3 to put in these letters or any proof of these telephone
4 calls, I requested a subpoena from your Honor and I
5 served that on the witness and this morning I asked the
6 witness whether he had produced this in accordance with
7 the subpoena and he told me no.

8 I also requested, your Honor, his 1975 calendar
9 since he talked about cancellation of dates and his
10 availability, and that also has not been supplied.

11 It will be almost impossible for me to cross-examine
12 this witness unless he complies with that subpoena
13 and brings me the material.

14 I cannot cross-examine him on his credibility
15 unless I can first examine this material to determine
16 whether or not the statements that he has made are
17 accurate or are inaccurate.

18 When I have asked him when they will be available
19 he told me he will try and look for them.

20 JUDGE WEIL: I heard the colloquy off the record
21 and I understand you have people at the union office
22 looking for some of this material?

23 THE WITNESS: They would be looking for the record
24 of phone calls mainly. The material that we have in
25 our possession, I think it has all been turned over to the

1 general counsel with the exception of one letter
2 which I have in our file.

3 All the minutes for all the notes on the negotiations
4 I retained in my own file.

5 They are in the office.

6 Because I don't work out of the office they are
7 in my possession.

8 In terms of the calendar of '74 I would have to look
9 either in my home or the office or even possibly in my car
10 and I did get away from here kind of late last night and
11 involved in other business and I didn't have a chance
12 really to dig for that calendar, but I am sure if it is
13 still around I would find it, the '74 calendar.

14 The '75 calendar I think I have, but I don't have
15 the '74 calendar.

16 JUDGE WEIL: You have the '74 calendar?

17 MR. KAUFMAN: '75 was subpoenaed along with '74
18 but you led me to believe you did not have 1975 here.

19 THE WITNESS: No, '74.

20 MR. KAUFMAN: You have '75 here?

21 THE WITNESS: Yes, I found the '75 calendar. The
22 '74 calendar I don't have. It is possible I could find it.
23 I have a welter of papers, I'm drowning in it so it is
24 not easy to dig out.

25 Whatever you ask for we are trying to call the office

1 and see what they have done with the phone log.

2 JUDGE WEIL: Let us go off the record.

3 Suppose you call the office. Can you make a
4 telephone available to the witness?

5 MR. EISENBERG: Before you do that, your Honor,
6 there is one item I neglected to do and that concerns
7 General Counsel's Exhibit 13 which is in front of the
8 witness.

9 JUDGE WEIL: Yes.

10 Q By Mr. Eisenberg) Mr. Colavito, I show you
11 General Counsel's Exhibit 13 which consists of a number
12 of pages for identification.

13 I asked you to look through all of these pages
14 which I have unattached from each other where they were
15 formerly attached and please segregate the ones where
16 you can identify that you received them on a specific
17 date.

18 A Okay.

19 Q Have you segregated those documents which you can
20 specify were received at a date certain?

21 A Yes.

22 Q Where are those?

23 A These are the ones.

24 MR. EISENBERG: Can these be remarked as General
25 Counsel Exhibit 13A to AA, I guess.

1 It goes A through Z and then one more.

2 JUDGE WEIL: Yes.

3 Q I show you General Counsel's Exhibit 13, Mr.
4 Colavito.

5 First can you identify it?

6 A Yes, this is the first draft of proposals given by
7 the company to me, not all at once, but series.

8 Q With respect to each document therein can you tell
9 us when you received them?

10 A No exact date. I can tell you within the periods.

11 JUDGE WEIL: Tell us the periods.

12 THE WITNESS: I think by the beginning of November
13 I had these. That would be, I guess, October, beginning
14 October to the beginning of November, in that period.

15 JUDGE WEIL: So all that are now stapled together as
16 General Counsel's 13 you received.

17 THE WITNESS: Of '74.

18 JUDGE WEIL: Between the beginning of October and
19 early November, 1974.

20 THE WITNESS: Right.

21 JUDGE WEIL: Are you offering them?

22 MR. EISENBERG: I am offering them.

23 MR. KAUFMAN: Voir dire?

24 JUDGE WEIL: Go ahead.

25 VOIR DIRE EXAMINATION

1 Q (By Mr. Kaufman) Mr. Colavito, do you
2 recall looking at this document yesterday?

3 A Yes.

4 Q And do you recall, in response to my questions as
5 to which documents you can remember the only ones you
6 could remember were grievance and arbitration, management
7 rights, recognition, bargaining units, reporting and
8 seniority.

9 A The ones I remember.

10 Q The only ones you can remember as being given to
11 you between the period of the end of September to the
12 beginning of November; do you recall stating that?

13 A I don't remember if I said by a date or for the
14 whole period.

15 Q For the whole period.

16 A If I said it the record will show it.

17 Q I would ask you if you recall saying that.

18 A No, I don't remember if I said it for the whole
19 period or it was for a particular day.

20 I know that three in one day and I didn't know
21 which ones they were.

22 But if those are the listings you made I'm assuming
23 that what you are saying is correct, that's all.

24 Q Do you recall going through your records of your
25 meetings and being asked to tell which documents were given

1 on which date.

2 A I said the records would not show it, my records
3 would not show that.

4 Q That is correct?

5 A Right.

6 Q And do you recall after going through those that
7 the only documents that you could recall were the
8 documents entitled grievance and arbitration, management
9 rights, recognition, bargaining unit, reporting and
10 seniority and as to all of the other attachments which
11 are part of GC 13 you did know at what point those were
12 given to you?

13 A As I said I couldn't be sure unless I compared.
14 I have a way of comparing what I had at one period of
15 time as compared to another period of time.

16 One of the ways I did was by marking them in plain
17 numbers. That is one of the ways. I marked the second
18 draft in Roman numbers and the only way I can tell us
19 by comparing some of my notations which I can recollect
20 and which I did.

21 Q My question was very simple.

22 A I'm just saying to you --

23 Q Do you recall yesterday testifying that you cannot
24 recall whether those articles in front of you other than
25 the four "grievance and arbitration, management rights,

1 recognition, bargaining units, reporting and
2 seniority were given to you between the period of the
3 end of September to the beginning of October?

4 Do you recall stating that yesterday?

5 A Well, I just said if I said it and you recall what
6 I said correctly, it is so.

7 I wouldn't deny what I said.

8 Q I am asking you if you recall, not what I said,
9 not if what I said is correct. I am asking if what you
10 said yesterday is correct.

11 A I do recall that I could not ascertain for sure
12 all these sections that were stapled together. I do recall
13 that.

14 Q You do recall?

15 A You rattled over a list of sections which I don't
16 recall if I remember those are the sections.

17 I don't even know which of the sections are still
18 in here. It's hard for me to know which ones you are
19 talking about which you have enumerated and which ones
20 are left in balance.

21 Q When you gave your testimony yesterday were you
22 being truthful?

23 A I certainly was.

24 Q And today is your recollection more refreshed than
25 it was yesterday?

1 A Absolutely, yes.

2 Q What did you use to refresh your recollection
3 between last night when you gave your testimony and
4 this morning?

5 A The second draft and third draft.

6 Q So that by looking at the second and third drafts
7 that refreshed your recollection as to the first draft?

8 A Yes, of course.

9 Q Is it your testimony that everything in the first
10 draft was given to you in the period the end of September
11 to the beginning of October?

12 A November.

13 Q The beginning of November?

14 A That's right.

15 Q What about the documents which you could not
16 identify which were attached to the first draft?

17 Did you turn this first draft over to the labor
18 board as a single attachment?

19 A I believe all the documents he has were turned over
20 by myself.

21 Q Did you turn over the one titled discharge,
22 discipline or suspension and termination?

23 A Yes.

24 Q Was that attached to the first document, the
25 first set of proposals which you turned over to general

1 counsel during the course of the investigation?

2 MR. EISENBERG: I am going to object to this.
3 I don't see how this has anything to do with voir dire.

4 JUDGE WEIL: I think it does.

5 When you turned these over to the general counsel
6 were they attached?

7 THE WITNESS: If they weren't taken apart by
8 general counsel. I'm assuming they were attached. I don't
9 remember exactly which sections I turned over, but if
10 they were taken apart I'm assuming they were attached,
11 that is the way I turned them over.

12 Q You turned over a packet to him of the first
13 proposals and they were attached; isn't that correct?

14 A Yes.

15 Q And it is your testimony right now that after this
16 general counsel 13 which was shown to you, you can
17 identify all the documents in the first packet which you
18 turned over as being given to you between the end of
19 September and the beginning of November, except for the
20 one marked termination and discharge; is that correct?

21 A I can't be sure of those two.

22 Q You can't be sure of those two and the others you
23 are absolutely sure of?

24 A Yes.

25 Q Again I ask you, by looking at your records can you

1 tell us how many documents were turned over to you
2 on each given meeting?

3 A No, I can't.

4 Q Would your records indicate if any particular
5 documents were turned over on any given meeting?

6 A All I have, a recollection in my notes is that three
7 copies, three sections were given to us at a particular
8 meeting and that is all.

9 It doesn't refer to which sections were --

10 Q So that the only record you have of any documents
11 being turned over to you is the record in your notes
12 of the meeting between the periods September and beginning
13 of November which says that three articles of a proposal
14 were turned over to you; is that correct?

15 A Yes, that is correct.

16 Q And there is no other indication in your records
17 that you kept of any other articles being turned over;
18 is that correct?

19 A In registering of articles turned over to me, no,
20 but as I marked them they would indicate to me what draft
21 they were used and so forth.

22 Q How would that marking be?

23 A As I said the first draft has regular numbers 1,
24 2, 3, 4, 5 for this section.

25 Whichever section it may be second draft had Roman

1 numbers.

2 Q And the third draft?

3 A The third draft I don't think has any -- whatever
4 it is I don't even know what it was, but if I had to
5 differentiate on the first or second, between the Roman
6 numbers and regular numbers --

7 MR. KAUFMAN: I have no further questions and I
8 have no objection to their introduction.

9 JUDGE WEIL: I will receive them.

10 (General Counsel's Exhibit 13
11 for identification received
in evidence, of this date)

12 JUDGE WEIL: Now, with regard to the materials that
13 have been --

14 MR. KAUFMAN: Your Honor, I'm sorry to interrupt you
15 but if I may be heard, the documents which I subpoenaed
16 are contained in the subpoena and although there has
17 been a response to some of it not all of it has been
18 responded to.

19 For instance, your Honor, I --

20 JUDGE WEIL: We know this, Counselor.

21 I am working on that right now.

22 MR. KAUFMAN: Thank you.

23 JUDGE WEIL: I am going to go off the record and
24 give you an opportunity to call your office, hoping
25 that at five minutes to 12 somebody would be there to

1 find out how successful this search has been for
2 the matter you asked them to search for, so we will go
3 off the record now for you to do that.

4 (Short recess taken)

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AFTERNOON SESSION

(3:15 p.m.)

Whereupon,

WILLIAM COLAVITO

having been previously sworn, was examined and testified further as follows:

JUDGE WEIL: The hearing will be in order.

We now have cross-examination by Mr. Kaufman.

Q Mr. Colavito, you testified that you are the president of the union?

A Yes.

Q Is that the highest officer in the union?

A The most responsible, I guess.

Q And I believe you testified that Mr. Zito is the secretary-treasurer?

A Yes.

Q Is that correct?

A Yes.

Q Who is the vice president again?

A Schifano.

Q Now, so that Schifano, Zito and yourself --

A Well, there are others too.

Q I am going to get to that in a second.

Now, could you tell me what are the other officers in the union? How many other officers are there?

1 A Well, there are first paid officers.

2 Q Excuse me?

3 A There are paid officers which are business agent,
4 three other business agents.

5 Q Three business agents?

6 A Right, and then there are executive board members.
7 They are nonpaid.

8 Q They are usually union members?

9 A Oh yes, all of them.

10 Q Elected?

11 A All officers are union members.

12 Q And other than the executive board and yourself
13 as president and Mr. Schifano, Mr. Zito and the three
14 business agents, is there anyone else?

15 A Three trustees.

16 Q Three trustees?

17 Let me ask you this, who administers the contracts
18 that the union has with different employers?

19 A Well, the officers in the field, of the field.

20 Q The three business agents?

21 A Yes.

22 Q Does Mr. Zito do that?

23 A Occasionally he gets involved.

24 Q Mr. Schifano?

25 A No, Mr. Schifano is more of an -- he is new as an

1 officer, but he also is a fill in in case the president
2 is not there.

3 He chairs the meetings and so forth.

4 Q And yourself?

5 A Yes.

6 Q Now, you testified you spend most of your time out
7 in the field; is that correct?

8 A Yes.

9 Q And do you supervise the work of the business agents?

10 A I guess you could say I coordinate the work of
11 the union because they have specific areas of
12 responsibility.

13 Q And Mr. Zito takes care of the affairs inside the
14 office?

15 A Well, he is mainly responsible for the financial
16 aspects of the organization. Some of the areas of office
17 work fall into administration of the organization, some
18 fall into financial so he may handle the clerical people
19 if he is here.

20 Q Who is chief spokesman for the union in contract
21 negotiations?

22 A In industrywide negotiations I would be.

23 Q When you say industrywide what do you mean by that?

24 A Well, associations whose contracts expire.

25 Q How many associations are there that you have
contracts with?

1 A Three.

2 Q Are there any other groups or individual employers
3 with whom you have contracts?

4 A We have all together 160 shops. I would say about
5 half would be association and the other half would be
6 independent shops.

7 Q You do the negotiations for the association; is
8 that correct?

9 A Well, no, not alone. We may have a group of
10 officers.

11 Q But you are the chief spokesman for those
12 negotiations?

13 A Yes.

14 Q So that you participate in those negotiations; is
15 that correct?

16 A Not all of them. I may not handle one association.
17 A couple of officers may go in there instead of myself
18 because they are small associations.

19 Q What are the 180 individual contracts, how many of
20 those do you do the negotiations for?

21 A I get involved?

22 Q .

23 A Very rarely.

24 Q Very rarely?

25 A Yes.

1 Q Milgo is the exception to the rule?

2 A Milgo is a -- we never had a contract with Milgo
3 and it was an organizational problem, organizing the
4 shop, so it is a continuous participation by myself
5 and the organizing of the shop, seeing it through from
6 the beginning to the negotiations.

7 That is why I am in Milgo.

8 Q How many negotiations were you involved in in
9 the year 1975?

10 A '75? Mainly the association which is the Allied
11 Association with an independent which is a new group I
12 have been involved in and that is all with the
13 association in '75.

14 Q So you had the association and a smaller allied
15 group, right?

16 A Yes.

17 Q When did those negotiations occur?

18 A They commenced in the second or third week in June,
19 something like that.

20 Q They started in June?

21 A Yes. '75 I'm talking about.

22 Q When did that contract expire?

23 A June 30th, '75.

24 Q So you negotiated with them for a period of two
25 weeks before the contract expired?

1 A Two or three weeks. There's three weeks at least.

2 Q As a result of those negotiations in June of
3 1975 was there a strike?

4 A There was.

5 Q Is that strike continuing to date?

6 A No. There are some -- there are some shops that
7 are on strike, some are lockouts.

8 Q So that there are some shops that are still on strike?

9 A Yes.

10 Q And there are other shops where the employees are
11 not working because of a lockout; is that correct?

12 A Right.

13 Q Would it be fair for me to say that the strike
14 commenced July 1st, 1975?

15 A July 1st, yes.

16 Q Would it also be right to say that that strike
17 carried forward through July, August, September and
18 October of 1975?

19 A for the associations you are talking about now?

20 Q Yes.

21 A Yes.

22 Q In fact the strike lasted seven months, right?

23 A Six and a half months, seven months from one
24 association, yes.

25 Q And the other one?

1 A The other one was settled in the same time,
2 but there was a lockout which is a byproduct of that.

3 Q So that is still so today?

4 A Yes.

5 Q The employees still out of work?

6 A Yes.

7 Q During that period of time were you involved in the
8 strike?

9 A During the strike?

10 Q Yes.

11 A Oh yes, I was the coordinator of the organization,
12 of course.

13 Q So as coordinator of the organization you were
14 tied up with the strike; is that right?

15 A You call that tied up. I'm involved, of course,
16 extensively too.

17 Q Let me ask you this, you testified that the company
18 called off a meeting that was scheduled for June 9th;
19 is that correct?

20 A Not that I know of.

21 Q Excuse me?

22 A Not that I know of.

23 Q Do you recall there being a meeting for June 9th?

24 A I don't think so.

25 Q You don't recall any meeting ever being set up for

1 June 9th; is that your testimony?

2 A Which one is the June 9th?

3 Q June 9, 1975. Do you recall there being a
4 meeting set up for that date?

5 A No, I don't think so.

6 Q So it is now your testimony, if I understand it,
7 that there was never a meeting scheduled for June 9th?

8 A I think there was a meeting in the middle of June,
9 I think. I don't think it was the 9th. I think it was
10 the 19th.

11 Q Do you recall if there was a meeting set up for
12 June 20th?

13 A There was a meeting in the middle of June of '75;
14 is that what you are talking about?

15 Q Who called off that meeting?

16 A Dave did.

17 Q Dave called off the meeting in June?

18 A It was told to me, yes.

19 Q What?

20 A It was told to me. through the office, they called
21 our office up.

22 Q And that was the only meeting in June?

23 A I believe so.

24 Q Directing your attention to May, do you recall if
25 there was a meeting scheduled for May 9th?

1 A Yes.

2 Q Do you recall testifying that the company called
3 that meeting off?

4 A That is what I understand, yes.

5 Q How did that meeting get called off?

6 A Phone call to the union.

Q Did they tell you who placed that call?

8 A I don't remember now but it came -- all the phone
9 calls, our meetings came from Dave's office.

10 Q Did they tell you the reason why the meeting had
11 to be called off for May 9th?

12 A No, I don't recall.

13 Q Was that meeting rescheduled for the 20th?

14 A Yes, of May, yes.

15 Q I believe you testified that Mr. Tolmach called
16 that meeting off?

17 A No, I said I called that off.

18 Q You called that meeting off?

19 A I called that off.

20 Q What was the reason for that?

21 A I had some surgery that day.

22 Q Surgery to your mouth?

23 A Inside, yes.

24 Q When was the next meeting set up for?

25 A I think in June or the 29th, not 29th of May, yes.

1 MR. KAUFMAN: Would you mark this, please, for
2 identification.

3 (Document marked Respondent's
4 Exhibit 2 for identification,
of this date)

5 Q Did you give a statement to the labor board,
6 Mr. Colavito?

7 A I did.

8 Q Is this your statement? Is that your signature?

9 A Yes, it is.

10 Q Is this the statement which you gave to the labor
11 board?

12 A I believe so, yes.

13 Q Mr. Colavito, I ask you again did the company call
14 off the meeting for May 9th?

15 A Yes, it did. Now, if you are referring to my
16 statement, you want me to answer it, I will answer it.

17 Q I don't want you to answer anything yet, Mr.
18 Colavito.

19 I ask you again, Mr. Colavito, was there a meeting
20 scheduled for May 20th which you called off?

21 A That's correct.

22 Q Mr. Colavito, I show you your statement, Page 33
23 and ask you to read starting from the second line
24 "We agree to meet on 5/9".

25 A Yes, I understand that.

1 Q Does that refresh your recollection as to
2 who called off the meeting?

3 A No, the statement is incorrect.

4 Q The statement is incorrect?

5 A That's right.

6 Q So that when you told the labor board "We agree
7 to meet on 5/9/75, I subsequently called off this
8 meeting. The next meeting, I believe, was scheduled
9 for 5/20 but I did not know if the meeting occurred on
10 5/20", that statement was incorrect?

11 A Yes, in checking my notes I circled as you can see
12 from my notes, I circled and interpreted it wrong. I
13 called off the 20th meeting.

14 Q Let me ask you, you gave the statement to the labor
15 board; is that correct?

16 A That is correct.

17 Q Did you tell them that you would tell the truth?
18 Did they ask you to swear that this statement was true?

19 A It is true.

20 Q It is true?

21 A The statement is. I swore that it is true but
22 subsequently checking my notes there was a mistake made.

23 Q Did you ever tell the labor board of this mistake?

24 A No, I just found out recently.

25 Q When recently did you find out?

1 A The last couple of days.

2 Q Did you notify the labor board that you made
3 this mistake?

4 A No, I did not.

5 Q Did you read this statement before you gave
6 testimony today?

7 A Yes, I did. I did not today but in the previous
8 days.

9 Q Long before you came here to testify did you read
10 the statement?

11 A Over the weekend.

12 Q After you read it over the weekend you came here
13 Monday morning and did you notify Mr. Eisenberg of the
14 incorrect statement?

15 A No, I guess I should have. I'm not familiar with
16 the procedures, no.

17 Q You didn't?

18 A No.

19 MR. KAUFMAN: Would you mark this, please.

20 (Document marked Respondent's
21 Exhibit 3 for identification,
of this date)

22 Q Mr. Colavito, I show you Respondent's Exhibit 3
23 for identification and ask you if those are the notes
24 of the meetings which you turned over to me pursuant to
25 the subpoena which I served on you yesterday.

1 A Yes.

2 Q One of the sheets; is that correct?

3 A That is correct.

4 Q Directing your attention to the right-hand side
5 of the page in the middle of the page where it says
6 "5/9/75 called off because of oral surgery;" is that correct?

7 A That is correct.

8 Q Did you put that down there?

9 A Oh yes. Those are my notes.

10 Q Do you have anything in your notes which would
11 indicate that a meeting has been set for the 20th,
12 and I show you your notes.

13 A No, I don't remember if they were, no. I wouldn't
14 have to look through them but some of these meetings
15 were not recorded in the notes.

16 If they are not in there it is not in there.

17 Q I ask you if you feel it is in there.

18 A Well, the meeting was set by phone so it wouldn't
19 be in here. I could almost say I'm sure that the meeting
20 was set up by phone after the night was cancelled.

21 Q So the meeting for 5/9 was set at the end of the
22 meeting on 5/2?

23 A That's right.

24 Q That was cancelled?

25 A That was cancelled.

1 Q It is your testimony that the statement which
2 you gave the labor board and the notes of your minutes
3 are incorrect and that Mr. Tolmach cancelled the 5/9
4 meeting; is that your testimony?

5 A I mixed the two meetings. I mixed the 9th meeting
6 for the 20th and I didn't discover until I went through
7 the notes in the last couple of days.

8 Q After going through the notes you didn't notify
9 the labor board?

10 A No. I should have but, you know, I'm not familiar
11 with the procedure and I guess I should have. It is a
12 mixup on the meeting dates.

13 MR. KAUFMAN: Could you mark this.

14 (Document marked Respondent's
15 Exhibit 4 for identification,
of this date)

16 Q I show you Respondent's Exhibit 4 for identification.

17 Are these the minutes for the period August 8
18 through October 16 which you turned over to me pursuant
19 to the subpoena, your notes of the meetings?

20 A My notes.

21 Q Is that correct?

22 A My notes, yes.

23 Q Now, directing your attention to Page 1, can you
24 tell me the fourth line from the bottom in ink, could
25 you read that for me?

1 A I called for a week and a half before Dave
2 Tolmach called back.

3 Q He said?

4 A He said he was going on vacation, suggested
5 September 9th, 2:30.

6 Q Didn't you testify in response to general counsel's
7 questions that you made these notes on the same day or
8 that night after the meetings were held?

9 A No, I did not.

10 Q That was not your testimony?

11 A No, I did not.

12 Q So that these notes were made at other times?

13 A Sometimes other times, yes.

14 Q When were they made?

15 A Could be based on whenever I had the opportunity.
16 I could do it during the meeting, I would do it during
17 the meeting.

18 Some things took place after, based on the situation.

19 Q How long after would be the longest period of time?

20 A Every meeting would be different. I couldn't
21 say.

22 Q Well, how about for the meeting of August 8th,
23 when did you make those notes?

24 A I wouldn't recall. Some may have been made right
25 after the meeting and some may have been made subsequently,

1 before the next meeting took place or in between.

2 I can't say for sure.

3 Q So you don't know when your notes were made?

4 A In relation to this one?

5 Q In relation to this one.

6 A Yes.

7 Q Is that correct?

8 A Some of it could have been during the meeting and
9 some after and so forth.

10 Q Let me ask you, when you gave your statement to
11 the labor board did you have to use these notes as a
12 basis for refreshing your recollection as to the events
13 which occurred during bargaining?

14 A I had to, of course.

15 Q And the notes were your basis of remembering --

16 A Part of it.

17 Q (Continuing) What transpired?

18 A Parts.

19 Q In part?

20 A Yes.

21 Q Did your notes accurately reflect what happened
22 at the negotiations?

23 A To the best of my recollection, yes.

24 Q Let me show you Page 34 of your affidavit.

25 I direct your attention to Paragraph 23. I believe

1 a meeting occurred on that date. I do not recall
2 the details of it at this point since I cannot locate
3 my notes to refresh my memory.

4 A Which year is this?

5 Q That is for '75, a meeting in '75, July 11, '75.

6 A Right.

7 Q Do you recall saying that to the labor board?

8 A If it is there I must have said it and I guess --

9 Q So is it true that you need your notes to refresh
10 your memory as to the meetings?

11 A Do I need my notes to refresh my memory?

12 Q Yes.

13 A Yes, I use them this way at this meeting.

14 Q Now, do you think your memory would be better on
15 November 14, 1975 as to events that happened on July
16 11, 1975 or would your memory be better on November
17 14, '75 of events that occurred in August of 1975?

18 A You lost me. You will have to repeat that.

19 Q Well, let me ask you this, do you recall if you
20 took these notes at the same time that you were bargaining
21 with Mr. Tolmach?

22 A No, I couldn't take them at the same time.
23 Some may have been jotted down during the course of the
24 meeting, some after the meeting and some subsequent
25 during that period.

1 Q You testified that during the course of the
2 first meeting you requested bonuses and sick leave.

3 Was that your testimony?

4 A If it was it was. I don't remember right now.

5 Q Did you request bonuses and sick leave at the first
6 meeting on August 8th?

7 A Sick leave and bonuses? I may have requested it.
8 I don't remember right now.

9 Q Well, do you recall if you requested sick leave
10 and bonuses on the August 8th meeting?

11 A I think I did in terms of all the fringe benefits.
12 What were the points of the company on this.

13 Q So you say you did?

14 A I believe I did.

15 Q I show you your notes and ask you whether or not
16 your notes reflect that you asked for sick leave and
17 bonuses at the August 18th meeting.

18 A No, it isn't.

19 Q It isn't?

20 A No. There's a lot of things not in my notes.

21 Q You did ask for the operation of the employees;
22 isn't that correct?

23 A Job operations.

24 Q That you did ask for and you recorded that on
25 your notes?

- 1 A I don't know if I did.
- 2 Q Let me show you your notes.
- 3 Did you recall that on your notes?
- 4 A Where are they?
- 5 Q Under No. 1.
- 6 A Job operation of employees, yes.
- 7 Q That you did ask them?
- 8 A Yes.
- 9 Q You did ask for the list of holidays; is that
- 10 correct?
- 11 A Yes, the particular holidays.
- 12 Q And your notes reflect that; isn't that right?
- 13 A That is correct.
- 14 Q And you did ask for pension, welfare copies in
- 15 course; is that correct?
- 16 A That's right.
- 17 Q The first time you met you testified you mailed a
- 18 letter to the company requesting bargaining in July;
- 19 is that right, the beginning of July?
- 20 A The beginning of July, yes.
- 21 Q You placed a telephone call after you got no
- 22 response to your letter; was that your testimony?
- 23 A I placed a telephone call? No.
- 24 Q Tell me what happened after you sent the letter.
- 25 A A call may have been made to the company after a

1 letter went out and no response was made.

2 Q Who called the company?

3 A The office would call.

4 Q Did they call?

5 A If their call was made it was made by the office.
6 I didn't make that call.

7 Q Do you know whether or not the office made a call?

8 A I believe they did. It was a long time before
9 we hadn't heard from the company and we checked on
10 their receiving our letter.

11 Q Do you know who placed that call?

12 A Would tell me to speak to Mac or Bruce since I
13 know them both.

14 Q Could that telephone call have been with David
15 Tolmach?

16 A No.

17 Q No?

18 A We wouldn't know Dave Tolmach at that point of
19 the game.

20 Q I show you again your statement, Page 1, Paragraph 2,
21 Paragraph 3 and ask you if that refreshes your recollection
22 as to how the bargaining commenced.

23 A That was after we received the communication of
24 the company that the thing was being referred to the
25 attorney.

1 Q I see, so you received a communication from
2 the company?

3 A That they were referring the matter to his
4 attorney.

5 Q I see. Did you tell that to the labor board?

6 A Of course I told it to the labor board.

7 Q Is that in the statement? Is it in the statement
8 that you received --

9 A Any way you want you can interpret.

10 Q Mr. Colavito, very simple question.

11 Just answer yes or no, is it in the statement that
12 you received a communication from the company that Mr.
13 Tolmach was the attorney to contact?

14 A No, it doesn't say we received a letter from the
15 company to contact him. It does not say that.

16 Q Mr. Colavito, I believe that pursuant to the
17 subpoena which I served on you I asked for all
18 correspondence between you and Milgo for the period
19 covering July, 1974 through October, 1975.

20 Now, do you have a copy of any correspondence from
21 Milgo where they said Mr. Tolmach was their attorney?

22 A We turn all our correspondence over.

23 Q I ask you if you have such correspondence.

24 A I don't know.

25 MR. KAUFMAN: Mr. General Counsel, do you have such

1 a document in your possession?

2 MR. EISENBERG: I didn't see one prior but I
3 will take a look.

4 I have a letter you yourself submitted to us.

5 MR. TOLMACH: No.

6 MR. KAUFMAN: What letter is that?

7 MR. TOLMACH: That is the 24th.

8 MR. EISENBERG: It is yours.

9 MR. KAUFMAN: That is the letter mailed by Mr. Tolmach
10 of Jackson, Lewis; is that correct?

11 MR. EISENBERG: It is the letter dated July 24, 1974
12 addressed to Mr. Colavito of the union from David Tolmach.

13 Q I ask you again, do you have any letter in your
14 possession sent by the company, Milgo, to the union
15 prior to July 24th which is the letter sent by Mr.
16 Tolmach, the attorney, notifying the union that Mr.
17 Tolmach was the attorney?

18 A We received a letter, okay? If I'm saying we
19 received it from the company rather than from the
20 attorney I'm making a mistake.

21 I don't handle the communications in the office
22 so if it came from the attorneys instead of the company
23 it is the same thing as far as I'm concerned.

24 Q So that you received a letter it is now your
25 testimony?

1 A The attorney instead --

2 Q Please.

3 A (Continuing) Milgo --

4 Q Please, it is now your testimony, as I understand
5 it, that Mr. Tolmach, the attorney, sent you a letter
6 on July 24th saying that he was prepared to start
7 bargaining; is that correct?

8 A Well, I don't know what it is. I was told that
9 there was a letter received in the office that David
10 Tolmach was representing the company and he is the one
11 that is going to be consulted with in order to set up
12 a meeting.

13 Whether it came from Milgo or the attorney's office
14 I'm not acquainted with.

15 Q So the first telephone conversation between your
16 office and Milgo with respect to these negotiations
17 was between David Tolmach and Mr. Zito from your office;
18 is that correct?

19 A The first telephone call?

20 Q The first telephone conversation about setting up
21 negotiations was between Mr. Tolmach and Mr. Zito;
22 is that correct?

23 A Well, it was initiated by our letter. We had not
24 heard, a call was made to Milgo. We subsequently got
25 into a discussion, our office did, with David Tolmach

1 in setting up the meeting.

2 Q And --

3 A That is the sequence of events.

4 Q And a meeting was set up; is that right?

5 A Yes.

6 Q Going back to August 8th which I believe was the
7 date of the first meeting, and I believe you testified
8 that you asked for bonuses even though that is not
9 reflected in your notes; is that correct?

10 A Yes.

11 Q I direct your attention to Page 26 of your
12 affidavit and in particular the middle of the page where
13 it reads "I also asked Tolmach for the first time
14 information as to what each employee had received in
15 bonus for the past four or five years".

16 That statement is given with respect to a meeting
17 that held on March 3rd; is that correct?

18 A Yes, that's right.

19 Q Is that statement correct that that was the first
20 time?

21 A It is not strictly correct, no.

22 Q So that is another inaccuracy which you gave to
23 the labor board in the statement?

24 A I don't know which way you want to draw it precisely
25 and so forth, but it was the first time we asked them

1 for the four-five year period.

2 We wanted a broad idea of what these men were
3 getting in wages, if they got any wages at all because
4 the company showed us no wage increases for four years,
5 so we wanted to get the full picture of four, five
6 years what the bonuses were but we asked them generally
7 for bonuses at the first meeting.

8 Q During the course of the first meeting, that was
9 held at David Tolmach's office; is that correct?

10 A That is correct.

11 Q Was that something that Mr. Tolmach had suggested
12 in his letter?

13 A I don't remember if it was in his letter but it
14 was handled that way.

15 Q It was agreed to?

16 A Yes.

17 Q And you met in Mr. Tolmach's office. What time
18 was the meeting called for?

19 A I believe it was in the afternoon.

20 Q Were you late for that meeting?

21 A I don't remember.

22 Q You don't recall whether or not you were late?

23 A No, I don't.

24 Q Do your notes reflect whether or not you were late?

25 A I don't think so. No, they don't. No, they wouldn't.

1 Q Do you recall whether or not Mr. Tolmach
2 indicated that during the course of negotiations if
3 agreements were reached they should be reduced to
4 writing and initialed by the parties?

5 A I don't remember, no.

6 Q You don't remember that?

7 A No, I don't.

8 Q Could Mr. Tolmach have said that?

9 A Oh sure, it is possible.

10 Q Do you normally do that as a practice, as an
11 negotiator?

12 A No, we don't.

13 Q Did you tell Mr. Tolmach that you were not going
14 to initial any documents and wanted to talk about the
15 concepts?

16 A I didn't want to initial documents? I wouldn't
17 say that.

18 Q So you never told him that you wouldn't initial
19 documents?

20 A I wouldn't initial them? No.

21 Q Did you tell him that you didn't want to talk
22 specific language but wanted to talk concepts?

23 A No. I may have said we could discuss if we have a
24 disagreement, discuss concept and we could always work
25 out the language. I may have said that, not exactly what

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

MILGO INDUSTRIAL, INC.,
Respondent.

No. 77-4121

CERTIFICATE OF SERVICE

The undersigned certifies that one (1) copy of the Board's appendix in the above-captioned case has this day been served by first class mail upon the following counsel at the addresses listed below:

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NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.
this 31st day of August, 1977.